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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 184.

THE MUTUAL RESERVE FUND LIFE ASSOCIATION, PLAINTIFF IN ERROR,

vs.

SARAH C. HAMLIN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

FILED OCTOBER 12, 1887.

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INDEX.

	Original.	Print.
Petition for writ of error	1	1
Petition to give security in lieu of supersedeas bond	2	1
Stipulation as to security in lieu of supersedeas bond	4	2
Order as to security in lieu of supersedeas bond	5	3
Certificate of Central Trust Company and district judge	6	3
Writ of error	7	3
Return to writ of error	8	4
Citation and proof of service of same	10	4
Caption	11	5
Transcript from State court	12	5
Summons and complaint	12	5
Sheriff's return	16	6
Exhibit A—Certificate of membership No. 13544	16	7
Petition for removal	24	9
Bond for removal	26	10
Order for removal	29	11
Clerk's certificate	30	11
Judge's certificate	31	11
Appearances entered	32	12
Answer	33	12
Replication	46	18
Demurrer to replication	51	20

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 26, 1890.

	Original.	Print.
Motion to expunge parts of replication	54	21
Hearing on motion to expunge	55	22
Opinion on demurrer and motion to expunge	57	22
Hearing before jury	59	22
Verdict	60	23
Order denying motion for new trial	61	23
Order substituting attorneys	63	24
Consent substituting attorneys	63	24
Order extending time to file bill of exceptions, &c.	65	24
Bill of exceptions	66	25
Plaintiff's evidence-in-chief	67	25
Testimony of Sarah C. Hamlin	68	26
Motion to dismiss	69	26
Defendant's evidence	69	26
Articles of incorporation offered	70	27
Extracts from laws of New York	70	27
Constitution and by-laws offered	72	27
Testimony of K. V. C. Jones	73	28
Geo. F. Potter	78	30
Frederic T. Braman	82	33
Plaintiff's evidence in rebuttal	88	36
Testimony of Wm. K. Caruthers	88	36
Mrs. H. H. Hamlin (recalled)	90	37
Felix A. Canova	93	38
J. M. Attwell	94	39
Motion to dismiss renewed	95	40
Motions to direct verdict for defendant	95	40
Charge to jury	98	41
Exceptions to charge	101	43
Requests to charge (denied)	102	43
Exhibit 1—Certificate of membership No. 13544	107	46
2—Proofs of death, &c.	117	51
3—Receipt for assessment No. 12	137	62
4—Receipt for assessment No. 13	138	63
5—Letter of Solomon Lucas to Mutual Reserve Fund Life Association, November 7, 1884	139	63
6—Letter of G. F. Potter, third vice-president, to Solomon Lucas, November 19, 1884	140	63
Defendant's Exhibit A—Assessment No. 13 and reply thereto	141	64
B—Assessment No. 14	143	65
C—Constitution and by-laws of defendant	146	66
K—Reinstatement rejected	159	73
Judgment	161	74
Affidavit of service of assignment of errors	162	75
Assignment of errors	163	75

1 Circuit Court of the United States, District of Connecticut.

SARAH C. HAMLIN
vs.
MUTUAL RESERVE FUND LIFE ASSOCIATION.

To the honorable the judges of the circuit court of the United States for the second circuit and district of Connecticut:

The petition of the said Mutual Reserve Fund Life Association, defendant in the above-entitled action, respectfully represents that it is aggrieved by the final judgment rendered against it in the said action upon the docket of this court, and is informed that there is error therein to its prejudice, and it is desirous that a writ of error be allowed to it therefrom to the Supreme Court of the United States.

Wherefore it prays that a writ of error be allowed to it, returnable to the next term of the Supreme Court of the United States, and that the same may operate as a supersedeas.

Dated New York, August 15, 1887.

MUTUAL RESERVE FUND LIFE ASSOCIATION,
By its attorneys, TAYLOR & PARKER.

2 Circuit Court of the United States for the District of Connecticut.

SARAH C. HAMLIN
vs.
MUTUAL RESERVE FUND LIFE ASSOCIATION.

To the Hon. Nathaniel Shipman, district judge, one of the judges of the circuit court:

The petition of the defendant respectfully shows to the court that judgment was entered herein on the 10th day of August, 1887, in favor of the plaintiff and against the above-named defendant for the sum of $11,143.22 and costs.

That the defendant has appealed therefrom to the Supreme Court of the United States, and is required by the law in such cases to give security on such appeal to procure a supersedeas.

That the defendant is reluctant to ask any one to become its surety on an undertaking to secure the costs and damages on such appeal, but desires instead thereof to file with a trust company money to an amount of fourteen thousand dollars.

Wherefore petitioner prays this court that an order be issued directing that the said sum of $14,000 be deposited with the Central Trust Company of the City of New York, and that the same be accepted and received from the said defendant to secure the costs

3 and damages of the appeal of the said defendant from this to the Supreme Court of the United States.

[SEAL.] MUTUAL RESERVE FUND LIFE ASSOCIATION,
By E. B. HARPER, *Pres't.*

Dated August 15, 1887.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Edward B. Harper, being duly sworn, says that he is the president of the Mutual Reserve Fund Life Association, the petitioner herein.

That the foregoing petition is true to the knowledge of deponent except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Deponent further says that the reason why this verification is not made by the petitioner is that the petitioner is a corporation and deponent is an officer thereof, to wit, president, and is acquainted with the facts stated in the foregoing petition, and makes this verification in its behalf.

EDWARD B. HARPER.

Subscribed and sworn to before me August 15, 1887.

[SEAL.] HERMAN AARON,
Notary Public, N. Y. Co.

4 Circuit Court of the United States for the District of Connecticut.

SARAH C. HAMLIN
vs.
MUTUAL RESERVE FUND LIFE ASSOCIATION.

It is hereby stipulated by and between the solicitors and counsel for the above-named parties that the — appeal to be taken by the defendant and appellant, The Mutual Reserve Fund Life Association, in this case to the Supreme Court of the United States the said appellant, instead of filing the usual appeal bond with sureties as surety for the payment of a judgment against it and the interest thereon, that said Mutual Reserve Fund Life Association shall deposit in the Central Trust Company of the City of New York the sum of fourteen thousand dollars, and that said sum shall be held as security until the final decision of this case in the Supreme Court of the United States or of such other proceedings rendering judgment payable and for the payment of judgment rendered in this case against the defendant and appellant; it is further stipulated that said sum shall be made a special deposit as security for the judgment herein in the Central Trust Company, in the city of New York, and that the same shall be paid over by said trust company only upon an order of this court made in this case.

In case of affirmance of said judgment by the Supreme Court
5 of the United States an order shall be granted, on a notice of five days to the solicitors of the defendant and appellant, directing the payment of the whole amount of said deposit, with any and all accumulations therein, or so much thereof as shall be sufficient to satisfy the judgment, with damages and costs to the complainant or her solicitors, and that defendant shall deposit with the clerk of this court some proper voucher signed by the officers of said Central Trust Company showing that said sum has been so deposited and will be held by said trust company subject to the order of this court, as above stated.

Dated July 14, 1887.

CHAS. E. PERKINS,
Of Counsel for Pl'ff.

Approved, to operate as supersedeas when the court shall certify that the above stipulation is carried out.

N. SHIPMAN,
District Judge.

6 The Central Trust Company of the City and State of New York hereby acknowledges that it has received from the Mutual Reserve Fund Life Association of the City and State of New York fourteen thousand dollars, which it agrees to hold and pay only upon an order from the circuit court of the United States for the district of Connecticut in the suit of Sarah C. Hamlin against said association.

Dated New York, August 16th, 1887.

CENTRAL TRUST COMPANY OF NEW YORK,
[SEAL.] By C. F. HYDE, *Second Vice-President.*

I hereby certify that the above stipulation has been carried out.

Hartford, August 17, 1887.

N. SHIPMAN,
District Judge.

7 UNITED STATES OF AMERICA, *ss:*

[Seal of Circuit Court, Connecticut.]

The President of the United States of America to the judges of the circuit court of the United States for the district of Connecticut, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Sarah C. Hamlin and Mutual Reserve Fund Life Association, a manifest error hath happened, to the great damage of the said Mutual Reserve Fund Life Association, as is said and as appears by its complaint, we, being willing that such error, if any hath been, should be dully corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you,

if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct the error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this seventeenth day of August,
8 in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and twelfth.

E. E. MARVIN,
Clerk of the Circuit Court of the United States of America for the District of Connecticut.

Allowed.
N. SHIPMAN,
One of the Judges of the Circuit Court of the United States for the District of Connecticut.

UNITED STATES OF AMERICA, *District of Connecticut,* } *ss:*

I, E. E. Marvin, clerk of the circuit court of the United States of America for the district of Connecticut, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from 11 to 161, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of Mutual Reserve Fund Life Association, plaintiff in error, against Sarah C. Hamlin, defendant in error, as the same remain of record and on file in said office.

9 In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Hartford, in the district of Connecticut, this 17th day of August, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and twelfth.

[Seal of Circuit Court, Connecticut.]

E. E. MARVIN,
Clerk U. S. Circuit Court, District of Connecticut.

10 UNITED STATES OF AMERICA, *ss:*

To Sarah C. Hamlin, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, eighteen hundred and eighty-seven, pursuant to a writ of error filed in the clerk's office of the circuit

court of the United States for the district of Connecticut, wherein Mutual Reserve Fund Life Association is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated August 17th, 1887.

N. SHIPMAN,
One of the Judges of the Circuit Court of the United States for the District of Connecticut.

HARTFORD, CT., *Aug.* 19, 1887.

Due & legal service of the within citation is hereby acknowledged.

SARAH C. HAMLIN,
By her att'ys, PERKINS & LUCAS.

11 The return of the judges of the circuit court of the United States for the district of Connecticut to the foregoing writ of error:

The record, proceedings, and judgment whereof mention is therein made follow in these words and figures, viz:

SARAH C. HAMLIN
versus
THE MUTUAL RESERVE FUND LIFE ASSOCIATION.

Be it remembered that heretofore, on the 19th day of November, A. D. 1885, there was removed from the superior court of the State of Connecticut within and for the county of New London, in said State, and filed in the said circuit court of the United States for the district of Connecticut a transcript of the record of a certain civil action or cause, which is in the words & figures following, viz:

12 To all to whom these presents shall come, Greeting:

Know ye that I, John C. Averill, clerk of the superior court of the State of Connecticut in and for the county of New London, in said State, having inspected the files and records of said court in my custody, do find there remaining on file a certain writ and complaint in a cause wherein Sarah C. Hamlin was plaintiff and The Mutual Reserve Fund Life Association was defendant in the words and figures following, to wit:

To the sheriff of the county of Hartford, his deputy, or to either of the constables of the town of Hartford, in said county, Greeting:

By authority of the State of Connecticut you are hereby commanded to summon the Mutual Reserve Fund Life Association, a corporation organized and existing under and by virtue of the laws of the State of New York and located in the city, county, and State of New York, to appear before the superior court to be held at Nor-
13 wich, in and for the county of New London, on the first Tuesday of November, A. D. 1885, then and there to answer unto Sarah C. Hamlin, of said town of Norwich, in a civil action, wherein the plaintiff complains and says:

1. On the 2nd day of July, A. D. 1883, in consideration of the admission fee paid and of the dues to be paid for expenses on or before the 30th day of June in every year during the continuance of the instrument of which Exhibit A is a copy and of all mortuary assessments, as per the table endorsed thereon, payable at the principal office of the defendant, in said city of New York, within thirty days from the date of each notice, the defendant made and delivered to Henry H. Hamlin, of said Norwich, an instrument in writing and under seal and of which Exhibit A is a copy, and thereby received the said Henry H. Hamlin as a member of the defend-
14 ant association, whereby there became payable to the plaintiff within ninety days after receipt of satisfactory evidence by the defendant of the death of said Henry H. Hamlin the sum of ten thousand dollars.

2. The defendant, on the 2nd day of July, A. D. 1883, was and still is a corporation duly incorporated under the laws of the State of New York, with power to make, execute, and deliver the instrument of which Exhibit A is a copy.

3. The plaintiff is the said Sarah C. Hamlin named in said instrument, and was at the time of the execution and delivery thereof the wife of said Henry H. Hamlin, and as such had an insurable interest in his life.

5. On February 17th, 1885, said Henry H. Hamlin died, which death was not caused by his own hand.

6. On the first day of April, 1885, satisfactory proof was
15 received by the defendant of the death of said Henry H. Hamlin.

7. The said Henry H. Hamlin duly fulfilled all the conditions stated in said instrument on his part to be performed.

8. The plaintiff duly fulfilled all the duties on her part required by her to be performed by said instrument, and made due proof of death according to the requirements of said instrument.

9. The death fund of the defendant at the time of the death of said Henry H. Hamlin was and still is ample for the payment of said ten thousand dollars.

10. The said $10,000 or any part thereof has not been paid.

The plaintiff claims $12,000 damages.

Hereof fail not, but of this writ lawful service and return make.

Dated at Norwich, this the 25th day of September, A. D. 1885.

SOLOMON LUCAS,
Justice of the Peace.

16 HARTFORD COUNTY, *ss:*

HARTFORD, CONN., *October* 13, *A. D.* 1885.

This day I left a true and attested copy of the within writ with the insurance commissioner of this State, the true and lawful attorney of the within-named Mutual Reserve Fund Life Association in this State, and to whom I paid the legal fee, as by law directed, at the time of service.

Attest:

THOMAS B. CHAPMAN,
Deputy Sheriff.

Fees:

Copy	1 00
End.	24
Service	12
Travel	5 20
Cash paid commissioner	2 00
	$8 56

EXHIBIT A.

Mutual Reserve Fund Life Association—number 13544; age, 44—Bryant building, corner Nassau & Liberty streets, New York.

In consideration of the statements, representations, and warranties contained in the application for this certificate of membership, and of the admission fee paid, and of the dues to be paid for expenses on or before the thirtieth day of June in every year during the
17 continuance of this certificate, and of all mortuary assessments, as per table endorsed hereon, payable at the principal office of the association, in the city of New York, within thirty days from the date of each notice, the Mutual Reserve Fund Life Association does hereby receive Henry H. Hamlin, of Norwich, county of New London, State of Connecticut, as a member of said association. Whenever the death fund of the association is insufficient to meet the existing claims by death, an assessment shall be made upon the entire membership in force at the date of the last death, the same to be apportioned among the members according to the age of each member, for such sum as the executive committee may deem sufficient to cover said claims, and the net amount received from such assessment (less twenty-five per cent. to be set apart for the reserve fund) shall go into the death fund.

18 Within ninety days after receipt of satisfactory evidence to the association of the death of the above-named member during the continuance of this certificate of membership there shall be payable to Sarah C. Hamlin (wife), of Norwich, county of New London, State of Connecticut, if living at the time of said death, otherwise to the legal representatives of said member, the sum of ten thousand dollars from the death fund of the association at the time of said death or from any moneys that shall be realized to the said fund from the next assessment, to be made as hereinabove set forth, and no claim shall be otherwise due or payable except from the reserve fund as hereinafter provided.

The net earnings of the association, together with twenty-five per cent. of the net receipts from each assessment, shall constitute a reserve fund, which shall be deposited with a trust company
19 and be securely invested in United States bonds, mortgages, or other interest-bearing securities by said trust company, as trustee, for the exclusive benefit of the members of the association, and the interest on the same as it accrues shall be placed by the said trustee to the credit of the death fund.

The reserve fund above $100,000 and in excess of sums represented by outstanding bonds shall be applied to the payment of claims in excess of the American experience table of mortality, and, when any claim by death is due, to making up any deficiency that may then exist in the death fund.

After the expiration of each period of five years during the continuance of this certificate of membership a bond will be issued (bearing interest at the rate of 4 per cent. per annum, payable annually to the death fund) for an equitable proportion of the re-
20 serve fund, and the principal of said bond shall be available ten years from its date towards paying future dues and assessments under the certificate; and should membership hereunder cease by death or otherwise, any portion of said principal not thus used shall be applied to increase the bonds issued at the next quinquennial apportionment to other members of the association holding certificates issued during the same year as this year certificate, and at which apportionment the rate of assessment may be thereafter changed to correspond with the actual mortality experience of the association.

No alteration of the terms of this contract shall be valid and no forfeiture thereunder shall be waived unless such alteration or waiver shall be in writing and signed by the president and one other officer of the association.

No agent of the association has authority to make, alter, or
21 discharge contracts, waive forfeitures, extend credit, or grant permits. This certificate is not binding until the first payments due thereunder shall have been fully received in cash by the association or by some agent authorized to receive the same, and during the life of the said member, and shall be subject to all the provisions and stipulations contained in the constitution and by-laws of this association, with the amendments thereto. A notice addressed to a member at his post-office address as appearing upon the books of the association, according to its usual course of business, shall be deemed a sufficient notice; and proof of mailing same, according to the usual course of business of said association, shall constitute and be deemed and held sufficient proof of compliance herewith on the part of said association.

Written notice of all assignments, to be valid, must be re-
22 ceived and approved by the association, and the beneficiary or assignee must possess an insurable interest in the above-named member equal to the amount assigned.

This certificate is issued and accepted subject to the express condition that if any of the payments above stipulated shall not be paid when due, at the office of the association, in the city of New York, or to an agent of the association furnished with a receipt signed by its president, secretary, or treasurer; or if the member during the continuance of this certificate shall engage in blasting, mining, submarine, or aeronautic operations, or the production of highly inflammable or explosive substances, or upon a railroad as brakeman or baggage-man or as conductor of a freight train, or in working or managing a steam-engine in any capacity, or shall engage in serv-

ice upon a sailing vessel or shall enter any military or naval
23 service whatever (the militia when not in actual service excepted) without the consent of this association therefor, in either of the foregoing cases, given in writing by the president or secretary thereof; or if the member shall die by his own hand within two years from the date of this certificate, whether sane or insane, or if any of the statements, answers, or declarations made in the application for this certificate, which application is hereby referred to and made a part hereof, are in any respect untrue, then and in each and every such case this certificate shall be null and void, and all payments made thereon shall be forfeited to the association.

In witness whereof the said Mutual Reserve Fund Life Association has caused its corporate seal to be hereunto affixed and these presents to be signed by its president or vice-president and secretary, at the city of New York, this 26th day of July, one thousand
24 eight hundred and eighty-three.

E. B. HARPER, *President.*

J. M. STEVENSON,
Ass't Secretary.

Petition for Removal of Cause to the Circuit Court of the United States, District of Connecticut.

STATE OF CONNECTICUT:

Superior Court, New London County. November Term, 1885.

SARAH C. HAMLIN, of Norwich, Conn't, Plaintiff,
vs.
MUTUAL RESERVE FUND LIFE ASSOCIATION OF NEW YORK, Defendant.

To said honorable superior court:

The petition of the Mutual Reserve Fund Life Association, a corporation organized and existing under and by virtue of the laws of the State of New York, and located in the city, county, and State of New York, respectfully represents that the above-entitled cause, of a civil nature, is now pending in said court, wherein the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars.

25 That the controversy in said suit is between citizens of different States, and that the petitioner, the defendant in said suit, was at the time of the commencement of this suit and still is a citizen of the State of New York, and that Sarah C. Hamlin, the plaintiff in said suit, was then and still is a citizen of the State of Connecticut, and that the petitioner desires to remove said suit from said court to the circuit court of the United States next hereafter to be held in the district of Connecticut.

Wherefore your petitioner now, at the term to which said suit is returnable and at which said cause could be first tried and before the trial of said cause, herewith files a bond, with good and sufficient

surety, conditioned as required by the statutes of the United States of America in such case made and provided, and respectfully prays for the removal of said above-described cause from the court wherein the same is now pending into said circuit court next to be held in said district as aforesaid.

26 Dated at New Haven this second day of November, A. D. 1885.

THE MUTUAL RESERVE FUND LIFE ASSOCIATION,
By its attorney, LOUIS H. BRISTOL.

Bond on Removal of Cause.

Know all men by these presents that I, Louis H. Bristol, of the town and county of New Haven, in the State of Connecticut, as principal, and Eugene S. Bristol, of the town of New Haven, in the county of New Haven and State of Connecticut, as surety, are held and firmly bound unto Sarah C. Hamlin, of the town of Norwich, in the county of New London and State of Connecticut, in the sum of two hundred and fifty dollars, to be paid to the said Sarah C. Hamlin, her attorney, executor, administrator, or assigns; for which payment, well and truly to be made, we hereby, jointly and severally, bind ourselves, our heirs, executors, and administrators, firmly by these presents.

27 Sealed with our seals and dated at New Haven, this second day of November, A. D. 1885.

The condition of the foregoing obligation is such that whereas the said obligee has heretofore brought a certain suit against the Mutual Reserve Fund Life Association, a corporation organized under the laws of the State of New York and located in the city, county, and State of New York, which suit is now pending in the superior court in and for the county of New London, in the State of Connecticut, and is of such a character as to be removable from said court into the circuit court of the United States for the district of Connecticut; and whereas the Mutual Reserve Fund Life Association is about to file in said State court a petition for such removal of said cause to said circuit court:

Now, therefore, if the Mutual Reserve Fund Life Association shall enter in said circuit court of the United States on the first day of its session to be held in said district of Connecticut next after

28 the filing of said petition a copy of the record in said suit and shall pay all costs that may be awarded by the said circuit court if said circuit court shall hold that such suit was wrongfully or improperly removed thereto, and shall appear in said circuit court, then the above obligation shall be void; otherwise to remain in full force and effect.

LOUIS H. BRISTOL. [L. S.]
EUGENE S. BRISTOL. [L. S.]

STATE OF CONNECTICUT, } ss.
New Haven County, }

NEW HAVEN, *November 2nd*, 1885.

Eugene S. Bristol, the above-named surety, being duly sworn, deposes and says that he resides in the town of New Haven and State of Connecticut and is worth the sum of not less than five hundred dollars over and above all his just debts and liabilities and exclusive of property exempt by law from levy of execution.

EUGENE S. BRISTOL.

29 Subscribed and sworn to, at the time and place above stated before me—

JOHN W. BRISTOL,
Commissioner of the Superior Court for New Haven County.

Order on Removal of Cause.

STATE OF CONNECTICUT:

Superior Court, New London County. November Term, 1885.

SARAH C. HAMLIN, of Norwich, Conn., Plaintiff,
vs.
MUTUAL RESERVE FUND LIFE ASSOCIATION OF NEW YORK, Defendant.

Upon filing and reading of the foregoing petition for the removal of said above-entitled cause and of the bond of Louis H. Bristol, as principal, and Eugene S. Bristol, as surety, and on motion of Louis H. Bristol, Esquire, attorney for said petitioner, it is hereby ordered that the said petition and bond be, and they hereby are, accepted, and that this court will proceed no further in said suit,
30 but that the same may be removed into the circuit court of the United States next to be held in the district of Connecticut, in the manner provided by the laws of the United States.

By the court:

JOHN C. AVERILL, *Clerk.*

All which I have caused by these presents to be exemplified and the seal of the superior court of the State of Connecticut to be hereunto affixed, and do hereby certify that the within and foregoing is a true copy of said original files and record.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Norwich, in said county and State, this 17th day of November, 1885.

[SEAL.] JOHN C. AVERILL, *Clerk.*

31 STATE OF CONNECTICUT, } ss:
New London County, }

Superior Court.

I, David Torrance, a judge of the superior court of the State of

Connecticut and presiding judge of said court, now in session, in and for the county of New London, do hereby certify that John C. Averill, whose name is subscribed to the preceding exemplification, is the clerk of the said superior court in and for the said county of New London, duly appointed and sworn; that the above is his genuine official signature, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the said exemplification is the seal of the said superior court, and that the foregoing attestation is in due form.

Dated at Norwich this 17th day of November, 1885.

DAVID TORRANCE, *Judge.*

32 And on the same day Solomon Lucas, Esq., entered his appearance for the plaintiff, and L. H. Bristol entered his appearance for the defendant.

And on the 27th day of May, 1886, defendant's answer was filed in the words and figures following, viz:

33 *Answer.*

Circuit Court of the United States for the District of Connecticut.

SARAH C. HAMLIN
vs.
MUTUAL RESERVE FUND LIFE ASSOCIATION.

And now comes the defendant, and by Louis H. Bristol, its attorney, makes this answer to the complaint in this action:

I. The defendant states that it is a corporation, and at all the times mentioned in the complaint was a corporation, formed, organized, and existing under and by virtue of chapter 267 of the laws of 1875, and of chapter 175 of the laws of 1883 of the State of New York, receiving and accepting members upon the terms and provisions of written applications for membership and under and subject to the provisions of its constitution and by-laws, whereby, as in such applications and certificates of membership issued thereon, certain benefits accrued as therein provided and not otherwise.

II. The defendant has no knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph or subdivision III of said complaint.

III. The defendant has no knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs or or subdivisions IV or V of said complaint.

34 IV. The defendant admits that a certain paper-writing purporting to be proof of the death of Henry H. Hamlin was heretofore, on April 1, 1885, submitted to the defendant.

V. The defendant denies each and every allegation contained in paragraph or subdivision VII of said complaint.

VI. The defendant denies each and every allegation contained in paragraph or subdivision VIII of said complaint.

VII. The defendant denies that at the time of the death alleged

in the complaint the death fund of the defendant applicable thereto was ample for the payment of the claim herein.

VIII. The defendant denies each and every allegation contained in paragraph or subdivision I of said complaint, except that, as hereinafter stated, a certain certificate of membership was issued to Henry H. Hamlin, as hereinafter stated and not otherwise, and the defendant leaves the plaintiff to produce such original certificate as she may be advised, and does not admit the alleged copy thereof annexed to the complaint in this action and denominated "Exhibit A."

IX. And the defendant, further answering, states that on or about the 30th day of June, 1883, one Henry H. Hamlin, in the complaint mentioned, made an application in writing to the defendant association for membership therein, whereby a certificate of ten thousand dollars was applied for to be issued, payable to Sarah C. Hamlin,
35 which certificate is the certificate mentioned and referred to in the complaint in this action, or intended so to be, and which said application is the application referred to — said certificate, to which said application this defendant refers and hereby makes a part of this answer; that in and by said application it was stated, declared, and warranted by the said Henry H. Hamlin that the same should form the basis and should be part of the contract between the said Henry H. Hamlin, the plaintiff, and the defendant association, and that the same were offered to said association as a consideration of the contract applied for and subject to all the limitations and requirements of the constitution and by-laws of the defendant association, all of which were thereby made and stated to be made a part of the certificate to be issued on said application (being the aforementioned certificate), and in and by said application it was further provided and stated and agreed by said Henry H. Hamlin that if he, the said Henry H. Hamlin, or his representatives should omit or neglect to make any payment as required by the conditions of said certificate, then the said certificate should be null and void and all money paid thereon should be forfeited to the defendant association, and, further, that the membership thereby applied for should be subject to all the conditions and agreements contained in the certificate of membership.

X. That the defendant, relying upon and, among other things,
36 in consideration of said application and the statements, declarations, and warranties therein contained, did, after the presentation of said application to it, issue the aforementioned certificate; that in and by said certificate it is provided that in consideration of the statements, representations, and warranties contained in the application for said certificate (being the aforesaid application), and of the admission fee paid and of the dues to be paid for expenses on or before the 30th day of June in every year during the continuance of said certificate, and of all mortuary assessments payable at the principal office of the association, in the city of New York, within thirty days from the date of each notice, the defendant association did thereby receive Henry H. Hamlin as

a member of said association, and in and by said certificate it is further provided and stated as follows:

"A notice addressed to a member at his post-office address, as appearing upon the books of the association (being the defendant association) according to its usual course of business, shall be deemed a sufficient notice and proof of mailing the same according to the usual course of business of said association (beng the defendant), shall constitute and be deemed and held sufficient proof of compliance herewith on the part of the said association" (being the defendant).

And said certificate was further issued on the further con-
37 dition and agreement and it was therein expressly provided and agreed as follows:

"This certificate is issued and accepted subject to the express condition that if any of the payments above stipulated shall not be paid when due, at the office of the association in the city of New York, or to an agent of the association furnished with a receipt signed by its president, secretary, or treasurer; or if the member, during the continuance of this certificate, shall engage in blasting, mining, submarine, or aeronautic operations, or the production of highly inflammable or explosive substances, or upon a railroad as brakeman or baggageman, or as conductor of a freight train, or in working or managing a steam-engine in any capacity; or shall engage in service upon a sailing vessel, or shall enter any military or naval service whatsoever (the militia when not in actual service excepted), without the consent of this association therefor, in either of the foregoing cases, given in writing by the president or secretary thereof; or if the member shall die by his own hands within two years from the date of this certificate, whether sane or insane; or if any of the statements, answers, or declarations made in the application for this certificate, which application is hereby referred to and made a part of hereof, are in any respect untrue, then and in each and every such case this certificate shall be null and void
38 and all payments made thereon shall be forfeited to the association."

XI. That said certificate and all the rights of said Henry H. Hamlin and of the plaintiff were and are subject to the provisions of said application and certificate, and to the provisions and requirements of the constitution and by-laws of the defendant association, all of which are hereby referred to and made a part of this answer.

XII. That in and by the constitution and by-laws of said association it was and is, among other things, provided as follows:

"On the first days of February, May, August, and November (or at such other period as the board of directors may determine) an assessment shall be made upon the entire membership in force at the date of the last audited death claim prior thereto for such a sum as the executive committee may deem sufficient to meet the existing claims by death, the same to be apportioned among the members according to the age of each member, as per the rates named in the certificates of membership, and the net amount received for such assessments (less twenty-five per cent., to be set apart for the reserve

fund) shall go into the death fund. A member failing to receive a notice of an assessment on or before the first days of February, May, August, and November for his share of the losses occurring
39 during the time specified, it shall be his duty to notify the home office in writing of such fact.

A failure to pay the assessment within thirty days from the first days of February, May, August, and November (or at such periods as may be named by the directors) shall work a forfeiture of membership in this association, with all rights thereunder. The provisions of this amendment shall take effect on and after August 1st, 1883."

And further: "If any member shall neglect to pay any dues or assessment when due, or if any of the conditions are violated upon which said certificate of membership is issued, then and in every such case such membership shall at once cease and determine and all payments thereon shall be forfeited to the association; but the executive committee shall have power to reinstate such delinquent member at any time within one year for good cause shown and upon satisfactory evidence of good health and upon payment of all delinquent dues and assessments."

And further: "A notice addressed to a member at his post-office address, as appearing upon the books of the association according to its usual course of business, shall be deemed a sufficient notice and proof of mailing the same according to the usual course of
40 business of said association, shall be deemed sufficient proof of compliance on the part of said association."

XIII. That, pursuant to the terms and provisions of said constitution and by-laws, the board of directors did, on the 11 July, 1883, at its regular quarterly meeting, duly determine that assessments should be made upon the entire membership of said association, as therein provided, on the first week days of February, April, June, August, October, and December of each year.

XIV. That the post-office address of Henry H. Hamlin, as appearing upon the books of the defendant association, was Mrs. H. H. Hamlin, Norwich, Connecticut.

XV. That on the first week day of June, 1884, to wit, June 2, 1884, a mortuary assessment of ten dollars was duly made by the defendant association upon the said Henry H. Hamlin under said certificate, and that a due notice thereof, according to the usual course of business of the defendant, was on said day deposited and mailed in the post office of the city of New York, with postage paid thereon, addressed to the said Henry H. Hamlin, at the address aforesaid; and the defendant states that said Henry H. Hamlin, for more than thirty days after the giving of said notice as aforesaid, failed and neglected to pay said assessment or any part thereof, and said assessment is not and never has been paid, and by reason thereof said certificate is null and void and became and was null and
41 void prior to the death of him, said Henry H. Hamlin, and prior to July 2, 1884, to wit, from and after July 1, 1884, and that prior to July 2, 1884, to wit, from and after July 1, 1884, the

said Henry H. Hamlin ceased to be a member of the defendant association.

XVI. The defendant further states that on the first week day of August, 1884, to wit, on first day of August, 1884, a mortuary assessment of ten dollars was duly made by the defendant association upon the members of said association, and that due notice thereof, according to the usual course of business of the defendant, was duly deposited and mailed in the post office in the city of New York, addressed to the said members respectively at their proper post-office address.

And the defendant states that the said Henry H. Hamlin, for more than thirty days after said August 1, 1884, failed and neglected to pay said assessment or any part thereof, and said assessment is not and never has been paid, and said certificate became and is null and void and became and was null and void prior to the death of him, the said Henry H. Hamlin, and prior to September 1st, 1884, and that prior to September 1st, 1884, the said Henry H. Hamlin ceased to be a member of the defendant association.

XVII. The defendant, further answering, states that on the week day of October, 1884, to wit, on October 1st, 1884, a mortuary
42 assessment of ten dollars was duly made by the defendant association upon the members of said association, and that a due notice thereof, according to the usual course of business of the defendant, was on said day duly deposited and mailed in the post office in the city of New York, with postage paid thereon, addressed to the said members respectively at their proper post-office address; and the defendant states that said Henry H. Hamlin for more than thirty days after said October 1st, 1884, failed and neglected to pay said assessment or any part thereof, and said assessment is not and never has been paid, and said certificate became and is null and void and became and was null and void prior to the death of him, the said Henry H. Hamlin, and prior to November 1st, 1884, and that prior to November 1st, 1884, the said Henry H. Hamlin ceased to be a member of the defendant association.

XVIII. And the defendant, further answering, states that on the first week day of December, 1884, to wit, on December 1st, 1884, a mortuary assessment of ten dollars was duly made by the defendant association upon the members of said association, and that due notice thereof, according to the usual course of business of the defendant, was on said day duly deposited and mailed in the post office in the city of New York, with postage paid thereon, addressed to said members respectively at their proper post-office address; and the defendant states that said Henry
43 H. Hamlin for more than thirty years after said December 1st, 1884, failed and neglected to pay said assessment or any part thereof, and that said assessment is not and never has been paid, and said certificate became and is null and void and became and was null and void prior to the death of him, said Henry H. Hamlin, and prior to January, 1st, 1885, and that prior to January 1st, 1885, the said Henry H. Hamlin ceased to be a member of the defendant association.

XIX. That by reason of the matters in this answer set forth the said Henry H. Hamlin ceased prior to the time of his death to be a member of the defendant association, and all the rights of Henry H. Hamlin and of the plaintiff became forfeited and said certificate became and was and is null and void.

XX. That the said Henry H. Hamlin did not nor did the plaintiff nor did any other person notify the defendant or the home office of any failure to receive any notice of any of said assessments.

XXI. That on July 2, 1884, the said Henry H. Hamlin was not in good health and was suffering with infirmities, ailments, weakness, and diseases, and continued so to be and was not in good health and was sick and ailing as aforesaid thence hitherto until the time of his death.

XXII. That after July 2, 1884, and prior to the death of said Henry H. Hamlin the said Henry H. Hamlin, by or through the plaintiff, his or her attorney, and the plaintiff and her attorney,
44 some one or all of them, applied to the defendant association, by and through its officers and executive committee, to reinstate the aforesaid certificate and to reinstate said Henry H. Hamlin as a member of the defendant association; which said application was denied and refused.

XXIII. That now and at all the times in the complaint mentioned it is provided and required by the rules and regulations of the defendant association at any time after the forfeiture or lapsing of membership therein, at its option, or in the event that sixty days have expired from the time of forfeiture or lapsing of membership or sixty days have expired since the failure to make any payment of dues or assessments after the same are due and payable, that reinstatement can only be had by the approval of the executive committee of defendant association, after approval of the medical director of defendant association upon a satisfactory medical examination of such lapsed member.

XXIV. That after more than sixty days had elapsed or expired after the forfeiture of the membership of said Henry H. Hamlin, to to wit, more than sixty days after July 2, 1884, the said Henry H. Hamlin was examined for the purpose of applying for reinstatement in defendant association, which said medical examination was submitted to the defendant association, and said reinstatement was duly rejected by the defendant association by and through the proper officers thereof, and due notice of such rejection or
45 refusal was given the said Henry H. Hamlin and the plaintiff, his and her attorney, during the lifetime of him, the said Henry H. Hamlin, and said Henry H. Hamlin, on the — day of ——, 1885, being then no more a member of the defendant association, died.

Wherefore the defendant demands judgment dismissing the complaint in this action with costs and adjudging said certificate to be null and void.

By its attorney, LOUIS H. BRISTOL.

SOUTHERN DISTRICT OF NEW YORK, } ss:
City and County of New York, }

Edward B. Harper, being duly sworn, says that he is an officer, to wit, president, of The Mutual Reserve Fund Life Association, the defendant in this action; that the foregoing answer is true to the knowledge of deponent except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Deponent further says that the reason why this verification is not made by the defendant is that the defendant is a corporation and deponent is an officer thereof, to wit, president, and is acquainted with the facts stated in the foregoing answer and makes this verification in its behalf.

EDWARD B. HARPER.

45½ Subscribed and sworn to before me this 17th day of May, 1886.

S. A. WEST,
Notary Public, N. Y. Co.

And on the 17th day of July, 1887, replication was filed in the words and figures following, viz:

46 Circuit Court of the United States for the District of Connecticut.

SARAH C. HAMLIN
vs.
THE MUTUAL RESERVE FUND LIFE ASSOCIATION.

Replication.

1. As to the matters alleged in paragraphs one, nine, ten, eleven, twelve, thirteen, and fourteen the plaintiff has no knowledge or information thereof, except of such as is set forth in the plaintiff's complaint, sufficient to form a belief.

2. As to the matters alleged in paragraph fifteen the plaintiff replies as follows:

1. She has no knowledge or information relative to any mortuary assessment made on the first day of June sufficient to form a belief.

2. That at that time said Henry H. Hamlin was and until his death remained insane.

3. That no notice was mailed or sent to the plaintiff or to the said Henry H. Hamlin of such assessment.

4. That the defendant then knew the said Henry H. Hamlin was insane.

5. That no notice was received of such assessment by the plaintiff or said Henry H. Hamlin.

6. That the plaintiff was informed in September, 1884,
47 and not till then that an assessment for June had been made, and she immediately thereafter, to wit, on the 6th day of Sep-

tember, 1884, tendered to the defendant the amount claimed by the defendant to be due, and the defendant refused to receive the same and then claimed that said policy had become void, and that said Henry H. Hamlin was no longer a member of the defendant association.

7. The rest of the allegations in said paragraph are denied.

3. As to the matters alleged in paragraph sixteen the plaintiff replies as follows:

1. She has no knowledge or information relative to any mortuary assessment being made on the first day of August, 1884, sufficient to form a belief.

2. That no notice was mailed or sent to the plaintiff or said Henry H. Hamlin of such assessment.

3. That no notice was received of such assessment by the said Henry H. Hammond or by the plaintiff.

4. That she was informed in September, 1884, and not till then that an assessment for August had been made, and immediately thereafter she tendered to the defendant the amount claimed to be due by reason of such assessment, and the defendant refused to accept of it and claimed said Henry H. Hamlin was no longer a member of the defendant association.

48 5. The remaining allegations in said paragraph are denied.

4. As to the matters alleged in paragraph seventeen the plaintiff replies as follows, to wit:

1. She has no knowledge or information relative to any mortuary assessment being made on the first day of October, 1884, sufficient to form a belief.

2. That no notice was mailed or sent to the said Henry H. Hamlin or the plaintiff of such assessment.

3. That no notice was received of such assessment by the said Henry H. Hamlin or by the plaintiff.

4. That neither the said Henry H. Hamlin or the plaintiff ever had any knowledge of such an assessment.

5. That the plaintiff has ever been willing and has repeatedly offered to pay the defendant all that was due to the defendant by reason of any and all of the mortuary assessments that have been made, and she still is ready to pay the same, but the defendant has ever since the said 6th day of September refused to receive any payments from the plaintiff, and has always given as a reason that said Henry H. Hamlin was not a member of the defendant association.

6. The rest of the allegations in said paragraph are denied.

5. As to the matters alleged in paragraph eighteen the plaintiff replies as follows, to wit:

1. She has no knowledge or information relative to any mortuary assessments being made on the first day of December, 1884,

49 sufficient to form a belief.

2. That no notice was mailed or sent to the plaintiff or the said Henry H. Hamlin of such assessment.

3. That no notice was received of such assessment by the said Henry H. Hamlin or the plaintiff.

4. That neither the said Henry H. Hamlin or the plaintiff had any knowledge of said assessment.

5. Clause five in paragraph 4 in this replication is made part of this paragraph.

6. All the other allegations in paragraph 18 are denied.

6. Paragraphs 19, 20, and 21 are denied.

7. Paragraph 22 is admitted.

8. As to the matters alleged in paragraph 23 the plaintiff has no knowledge or information thereof sufficient to form a belief.

9. Paragraph twenty-four (24) is admitted, except it is denied that there was any forfeiture of the membership of said Henry H. Hamlin, and that said Henry H. Hamlin was not a member of said association at the time of his death, and that the said application was duly rejected.

10. That the defendants have neglected and refused to make any mortuary assessments to meet the deficiencies in the death fund, if any existed, which the plaintiff denies.

THE PLAINTIFF,
By her attorney, SOLOMON LUCAS.

50 And on the 14th day of September, 1886, demurrer to replication was filed in the words and figures following, viz :

51 Circuit Court of the United States for the District of Connecticut.

SARAH C. HAMLIN
vs.
THE MUTUAL RESERVE FUND LIFE ASSOCIATION.

Defendant's Demurrer to Replication of Plaintiff.

I. And now the said defendant demurs to so much of the second paragraph of the plaintiff's replication as alleges that on the first day of June, 1884, said Henry H. Hamlin was and until his death remained insane, because said defendant says that said allegation is not in the law a sufficient answer or reply to the allegations set forth in paragraph fifteen of the defendant's answer or to any of the other allegations in said answer contained.

And for a like reason the plaintiff demurs to such part of clause 3 of said second paragraph of said replication as alleges that
52 no notice of the mortuary assessment was sent to the plaintiff.

And for a like reason the defendant demurs also to the allegations set forth in clauses 4, 5, and 6 of the second paragraph of said replication.

II. And the defendant also demurs to such part of clause 2 of the third paragraph of said replication as alleges that no notice of the mortuary assessment of August 1st, 1884, was mailed or sent to the plaintiff, and to the allegations contained in clauses 3 and 4 of said paragraph third, because such allegations are not in the law a sufficient answer or reply to paragraph 16 of defendant's answer.

III. And the defendant also demurs to such part of clause 2 of the fourth paragraph of said replication as alleges that no notice of the mortuary assessment of October 1st, 1884, was mailed or sent to the plaintiff, and to the allegations contained in clauses 3, 4,
53 and 5 of said fourth paragraph, because such allegations are not in the law a sufficient answer or reply to paragraph 17 of defendant's answer.

IV. The defendant also demurs to such part of clause 2 of the fifth paragraph of said replication as alleges that no notice was mailed or sent to the plaintiff of the mortuary assessment of December 1st, 1884, and to the allegations contained in clauses 3, 4, and 5 of said fifth paragraph, because such allegations are not in the law a sufficient answer or reply to paragraph 18 of defendant's demurrer.

THE DEFENDANT,
By its attorney, LOUIS H. BRISTOL.

And on the 24th day of September, 1886, motion to expunge portions of the replication was filed in the words and figures following, viz:

54 Circuit Court of the United States for the District of Connecticut.

SARAH C. HAMLIN
vs.
THE MUTUAL RESERVE FUND LIFE ASSOCIATION.

Defendant's Motion to Expunge Certain Portions of the Plaintiff's Replication.

And now the defendant in the above-entitled cause, by Louis H. Bristol, its attorney, hereby moves to expunge as impertinent and irrelevant the following portions of the plaintiff's replication on file in said cause, to wit:

Clause 2 of paragraph II of said replication; also such part of clause 3 of said paragraph as alleges that no notice of the mortuary assessment therein referred to was mailed or sent to the plaintiff.

Also clauses 4, 5, and 6 of said paragraph II. Such part of clause 2 of paragraph III of said replication as alleges that no notice of the mortuary assessment therein referred to was mailed or sent to the plaintiff.

Also clauses 3 and 4 of said paragraph III; also such
55 & 56 part of clause 2 of paragraph IV of said replication as alleges that no notice of the mortuary assessment therein referred to was mailed or sent to the plaintiff; also clauses 3, 4, and 5 of said paragraph IV; also such part of paragraph V of said replication as alleges that no notice of the mortuary assessment therein referred to was mailed or sent to the plaintiff; also clauses 3, 4, and 5 of said paragraph V.

DEFENDANT,
By its attorney, LOUIS H. BRISTOL.

And at the term of said court held at Hartford on the 27th day of September, 1886, the parties, by their counsel, duly appeared and said motion was fully heard.

And on the 29th day of September, 1886, the following opinion of court was filed in the words and figures following, viz:

57 Circuit Court of the United States for the District of Connecticut.

SARAH C. HAMLIN
vs.
MUTUAL RESERVE FUND LIFE ASSOCIATION.

SHIPMAN, *D. J.:*

The demurrer to so much of the 2nd paragraph of the plaintiff's replication as alleges that on the first day of June, 1884, said Henry H. Hamlin was, and until his death remained, insane is sustained.

The demurrer to the specified portion of clause 3 of said second paragraph and of the second clause in each of paragraphs 3, 4, and 5 is overruled, it having been alleged in the answer that the post-office address of Henry H. Hamlin was Mrs. H. H. Hamlin, Norwich, Conn.

The demurrer to clauses 4 and 5 of said second paragraph and to clause 3 of the third paragraph, clause 3 of the fourth
58 paragraph, and clause 3 of the fifth paragraph is sustained.

The demurrer to clause 6 of said second paragraph, clause 4 of the third paragraph, clauses 4 and 5 of the fourth paragraph, and clauses 4 and 5 of the fifth paragraph is overruled.

A corresponding disposition is made of the motion to expunge said portions of said replication.

59 And at the term of said court held at New Haven, on the fourth Tuesday of April, 1887, the plaintiff, by Solomon Lucas, Esq., her attorney, duly appeared to prosecute said suit, and the defendant, by Messrs. Taylor & Parker, its attorneys, also appeared, & the parties were at issue, as hereinbefore appears.

Wherefore the marshal of the district of Connecticut is commanded that he cause to come here immediately twelve, &c., by whom, &c., and who, &c., to recognize, &c., because as well, &c., and the jurors of the said jury, by the marshal for this purpose empannelled and returned, to wit, Sheldon J. Alling, Jesse R. Brooks, Sheldon Clark, David B. Dibble, Aaron P. Fenn, Benjamin Griffin, Horace E. Hickok, William E. Hine, Harvey W. Leets, James Leek, Washington Post, Marion H. Watrous, who, being called, come, and who, being elected, tried, and sworn to speak the truth of and concerning the premises, upon their oaths say as follows:

60 U. S. Circuit Court, District of Connecticut.

SARAH C. HAMLIN
vs.
MUTUAL RESERVE FUND LIFE ASSOCIATION.

Verdict for Plaintiff.

In this case the jury find the verdict for the plaintiff, and therefore find for the plaintiff to recover of the defendant the sum of $9,936, with interest thereon from the 1st day of August, A. D. 1885, with costs of suit.

J. SHELDON ALLING,
Foreman of the Jury.

And on the 9th day of June, 1887, order denying motion for a new trial was filed in the words and figures following, viz:

61 At a stated term of the circuit court of the United States for the district of Connecticut, held at the United States court-rooms, at the city of Hartford, on the 14th day of July, 1887.

Present: Hon. Nathaniel Shipman, judge.

SARAH C. HAMLIN, Plaintiff,
vs.
MUTUAL RESERVE FUND LIFE ASSOCIATION, Defendant.

The defendant's motion, made upon the judge's minutes of the trial of this action and upon the pleadings and all the proceedings heretofore had in the action and upon the bill of exceptions as settled, that the verdict of the jury upon the trial of this action heretofore, on the 27th day of April, 1887, rendered herein in favor of the plaintiff and against the defendant for the sum of $9,936 and interest thereon from August 1, 1885, be set aside and altogether holden for nothing as contrary to the evidence taken on such trial, and for a new trial of this action, coming on to be heard:

Now, after hearing Frederick S. Parker, of counsel for the defendant, in support of said motion, and Solomon Lucas, of counsel in opposition thereto, and due deliberation being had thereon, it is—

62 Ordered that said motion be, and the same is hereby, in all things denied.

N. SHIPMAN,
District Judge.

And, on the same day, consent and order of substitution of attorneys was filed in the words and figures following, viz:

63 At a stated term of the United States circuit court for the district of Connecticut, held at chambers thereof, at the court-house, in the city of Hartford, on the 9th day of June, 1887.

Present: Hon. Nathaniel Shipman, judge.

SARAH C. HAMLIN
vs.
MUTUAL RESERVE FUND LIFE ASSOCIATION.

On the annexed consent, it is ordered that Taylor & Parker be, and they hereby are, substituted as attorneys for the defendant in this action.

N. SHIPMAN,
District Judge.

U. S. Circuit Court, District of Conn't.

SARAH C. HAMLIN
vs.
MUTUAL RESERVE FUND LIFE ASSOCIATION.

In the above-entitled cause, now pending in the circuit court of the United States for the district of Connecticut, and wherein I, the undersigned, Louis H. Bristol, appear*ing* as attorney of rec-
64 ord for the defendant therein, — hereby consent that Taylor & Parker, of New York city, may be substituted in my place as attorneys of record for said defendant.

Dated this 31st day of May, 1886.

LOUIS H. BRISTOL.

And on the same day order extending time to serve exceptions was filed in the words and figures following, viz:

65 At a stated term of the circuit court of the United States for the district of Connecticut, held at chambers, at the court-house, in the city of Hartford, on the 9th day of June, 1887.

Present: Hon. Nathaniel Shipman, judge.

SARAH C. HAMLIN
vs.
MUTUAL RESERVE FUND LIFE ASSOCIATION.

Defendant's time to make and serve bill of exceptions and file same and to procure writ of error and bond is hereby extended from June 26, 1887, to August 15, 1887.

N. SHIPMAN,
District Judge.

Consented to.
CHAS. E. PERKINS,
Counsel for Plaintiff.

And on the 14th day of July, 1887, motion for a new trial was heard and denied.

And on the 15th day of July, 1887, bill of exceptions was filed in the words and figures following, viz:

66 At a stated term of the circuit court of the United States for the district of Connecticut, held at the United States court-rooms, in the city of New Haven, the 26th day of April, 1887.

Present: Hon. Nathaniel Shipman, judge.

SARAH C. HAMLIN, Plaintiff,
vs.
MUTUAL RESERVE FUND LIFE ASSOCIATION, Defendant.

Cause on and hearing ordered.

Mr. Solomon Lucas and Mr. C. E. Perkins, for the plaintiff; Mr. Alfred Taylor and Mr. Frederick S. Parker, for the defendant.

Jury impannelled and trial begun.

April 27, 1887, trial continued, and verdict for plaintiff in the sum of $9,936, with interest thereon from August 1, 1885, and costs.

Attorney for defendant moves for a stay of proceedings, with leave to move for a new trial. Court grants sixty days' stay to hear motion and settle exceptions.

67 Circuit Court of the United States for the District of Connecticut.

SARAH C. HAMLIN
vs.
MUTUAL RESERVE FUND LIFE ASSOCIATION.

And now, on this day, to wit, the 26th day of April, 1887, before the Hon. Nathaniel Shipman and a jury, at a circuit court held in the city of New Haven, in said district of Connecticut, came as well the said defendant and its attorneys and counsel as the said plaintiff and her attorneys and counsel; and the jurors, being called, likewise came; and, after being elected, tried, and sworn to try the issues joined in this action, the plaintiff, to maintain and prove the issues on her part, produced and called the following evidence and witnesses, to wit:

Plaintiff offered in evidence the certificate of membership issued by defendant to Henry H. Hamlin.

Objected to by defendant's counsel on the ground that the constitution and by-laws of defendant association were not offered at the same time, and that the same form part of the contract, the certificate expressly providing that it is "subject to all the provisions and stipulations as contained in the constitution and by-laws of this association." Objection overruled; to which ruling defend-
68 ant's counsel then and there duly excepted.

Certificate admitted in evidence and marked "Plaintiff's Exhibit 1."

Proofs of death offered in evidence; admitted and marked Defendant's Exhibit 2.

It was admitted that all payments required were made, except payment of mortuary assessments after April 1, 1884, and that H. H. Hamlin died February 17th, 1885.

I am the plaintiff and the widow of Henry H. Hamlin. I now reside and have resided in Norwich, Connecticut, for twenty years last past.

(Receipt for assessment No. 12, dated February 7, 1884, offered in evidence and marked Plaintiff's Exhibit 3; receipt for assessment No. 13, dated April 10, '84, offered in evidence and marked Plaintiff's Exhibit 4.)

I paid both of these assessments myself, and these are the receipts.

Cross-examination by Mr. TAYLOR:

Notice of assessment No. 12 shown witness.

The signature on that paper, Sarah C. Hamlin, is my own original signature; also the words "Mrs. H. H. Hamlin." It is in the same condition as when I sent it, and I sent it on the day that it bears date, February 6, 1884.

(Paper marked Def't's Exhibit "A" for identification.)

Notice of assessment No. 13 shown witness.

That is also my signature. I sent it on the day it bears date, April 9, 1884, and — is in the same condition as when I sent it.

69 (Paper marked Exhibit "B" for identification.)

I signed these papers and enclosed them to the defendant at the time of their dates, February and April, 1884, and enclosed the money in payment of assessments 12 and 13 respectively.

Plaintiff rests.

Defendant's counsel moves to dismiss the complaint—

First, on the general ground for the want of proof; second, upon the ground that payment of the assessments since assessment of April 1, 1884, is not shown; third, upon the ground that it is admitted in the proofs of death that some payments were not made; fourth, on the ground that paragraph 22 of the answer is admitted by the replication.

In paragraph 22 of the answer it is alleged that after July 2d, 1884, Henry H. Hamlin, through the plaintiff, applied to the defendant to reinstate the certificate on which this action is brought, and to reinstate said Henry H. Hamlin as a member of defendant association; which application was denied and refused by the defendant.

Which motions and each of them were denied by the court, and the defendant then and there duly excepted to such denial and severally to the denial on each of the above grounds respectively.

Defendant's Evidence.

The defendant, to maintain the issues on its part, produced the following witnesses and evidence:

Defendant offered in evidence the articles of incorpora-
70 tion of the defendant, which articles established that the defendant was duly incorporated under chapter 175 of the laws of 1883 of the State of New York; also offered in evidence the act, chapter 175 of the laws of 1883 of the State of New York, entitled "An act to provide for the incorporation and regulation of co-operative assessment life and casualty insurance associations and societies," which evidence showed that defendant was a corporation, association, or society duly organized and carrying on the business of life and casualty insurance upon the co-operative or assessment plan, under the provisions of chapter 175 of the laws of 1883 of the State of New York.

Section 5 of said act provides as follows:

"Any corporation, association, or society which issues any certificate, policy, or other evidence of interest to or makes any promise or agreement with its members whereby, upon the decease of a member, any money or other benefit, charity, relief, or aid is be paid, provided, or rendered by such corporation, association, or society to the legal representatives of such member or to the beneficiary designated by such member, which money, benefit, charity, relief, or aid are derived from voluntary donations or from admission fees, dues, and assessments or any of them collected or to be collected from the members thereof or members of a class therein, and interest and accretions thereon or rebates from amounts payable to bene-
71 ficiaries or heirs, and wherein the paying, providing, or rendering of such money or other benefit, charity, relief, or aid is conditioned upon the same being realized in the manner aforesaid, and wherein the money or other benefit, charity, relief, or aid so realized is applied to the uses and purposes of such corporation, association, or society and the expenses of the management and prosecution of its business, shall be deemed to be engaged in the business of life insurance upon the co-operative or assessment plan, and shall be subject only to the provisions of this act."

And section 16 of said act provides as follows:

"All corporations, companies, societies, organizations, or associations of this or any other State or country transacting the business of life or casualty insurance on the co-operative or assessment plan, as referred to in the fifth and sixth sections of this act, are hereby made subject to all the provisions of this act, and shall hold, within the county in which the principal office is located in this State, a stated annual meeting of their members or policy-holders or representatives of local boards or subordinate bodies in such manner and subject to such regulations, restrictions, and provisions as the constitution or by-laws of the same may provide. In cases of secret or fraternal societies having a grand or supreme body, such meeting of the grand or supreme body may be at such time and place as shall be designated by such grand or supreme body. At such meeting a full and specific report of all receipts and expenditures of the preceding year or since the last meeting, as the case may be, shall be submitted. Notice of each such meeting shall
72 be given in such manner as the by-laws may direct, but not

less than five days before such meeting, to each director, member, and policy-holder, except that in lieu thereof such notice may be given to a subordinate body of a society having a grand or supreme body, or to a local board subordinate to the association. Every such association, corporation, or society other than secret fraternal societies now authorized as aforesaid to do business in this State must hereafter, before the adoption of any by-laws or amendment thereto, cause the same to be mailed to the members and directors of such association, society, or corporation, together with a notice of the time and place when the same will be considered, which notice shall be the same as hereinbefore required for stated meetings.

The books and papers of such association shall, at all reasonable times, be open for examination by members or their representatives. All associations, societies, companies, corporations, or organizations now transacting or hereafter desiring to transact the business of life or casualty insurance in this State upon any other plan than that defined in and by sections five and six of this act shall comply with all the provisions of the general life and health insurance laws."

The constitution and by-laws of the defendant association were thereupon offered in evidence and marked Exhibit " F."

The defendant offered sundry depositions, of which the
73 substance is as follows:

K. V. C. JONES, of the city of Brooklyn, State of New York, of lawful age, being duly cautioned and sworn, deposes and says:

I have been in the employ of the defendant since January, 1883, in charge of the assessment department.

(Assessment register of the Mutual Reserve Fund Life Association shown witness.)

This book now shown me was the assessment register in use by the association in May and June, 1884. In it is an entry, number 13544, Henry H. Hamlin. The address of said Henry H. Hamlin, appearing upon the books of the association, is " Mrs. H. H. Hamlin, Norwich, Connecticut." Notice of assessment No. 14, dated June 2, 1884, was mailed to Henry H. Hamlin, at his post-office address, as appearing upon the books of the association, namely, "Mrs. H. H. Hamlin, Norwich, Connecticut." This was mailed from the home office of the association, in the city of New York. This notice of assessment No. 14, June 2, 1884, was deposited in a regular United States mail-bag, furnished by the Post Office Department; and this was all done according to the usual course of business of the defendant association.

Q. What was the usual course of business of the association in mailing and sending notices of assessment?

74 A. In writing them all the envelopes are directed; afterwards the slips are compared with the addresses and the notices are placed in the envelopes, which have also been compared with the addresses on the books, sealed, stamped, and placed in the mail bag,

and this course was followed in regard to assessment No. 14, made June 2, 1884. This course was pursued with reference to notice for Henry H. Hamlin respecting assessment No. 14. I saw that notice put into one of these United States mail bags. Before that notice was deposited in the United States mail bag the notice and the address on the envelope were called back from the address written on the envelope and compared with the address as appearing upon the books of the association. The address on the envelope corresponded with the address appearing upon the books of the association.

(Witness shown book.)

I know that this assessment notice to Henry H. Hamlin went into the bag. It was all done according to the usual course of business of the defendant association. The book shows that the assessment notice was sent. Notice of assessment No. 14, June 2, 1884, was mailed to Mrs. H. H. Hamlin, Norwich, Connecticut. This was all done according — the usual course of business of the defendant association. Assessment No. 14 was not paid on this certificate, No. 13544, H. H. Hamlin.

Cross-examination by Mr. LUCAS, of counsel for plaintiff:

Q. When assessment No. 14 was made out you knew nothing about it except as it appears in this book?

75 A. I know I had charge of it and saw that every assessment notice that was liable for No. 14 was made out.

Q. Have you any knowledge except as it appears upon the books?

A. As it appears on the book; I have no other knowledge than that. I saw notice of assessment 14 to Henry H. Hamlin put into the bag. I saw it with all others. My attention was called to this particular notice with all the others. I saw that that and every notice was put in the mail bag. I remember a great many notices were put in, and I know Hamlin's assessment notice was put in with the others. I always attended to it myself. I have no particular recollection as to this particular notice except that it went into the bag with the others; only as it appears on the book, and so far as my attention was called at the time of making it out and putting it in the bag.

Q. When you stated that a notice of assessment was sent to Henry H. Hamlin, to the post-office address as appearing on the books of the defendant association, you meant by that it was sent as it appeared by the book?

A. Yes, sir.

Q. And that is all the positive knowledge you have on the subject, that it was sent as appeared on the book?

A. That knowledge I have.

Q. I don't suppose you can remember as to any particular assessment—you would not be able to state as to any particular

76 assessment that your particular attention was called to it at the time?

A. No, sir.

Q. I understand you to say that it was mailed from 55 Liberty street.

A. Yes, sir.

Q. And that you make that statement from any particular recollection or from the general course, the way those notices of assessments were mailed?

A. The association was there at the time, and I was there myself.

Q. When you say this was mailed from 55 Liberty St. it is an inference of your own from the fact that it was your custom?

A. Certainly; and I know it was mailed from there.

Q. How do you know?

A. I cannot help knowing it. I was there and saw it mailed.

Q. Did you see this particular notice put in the bag?

A. I know it was.

Q. Was your attention called particularly to this at the time?

A. No, sir.

Q. When you say this notice was deposited in the mail bag your attention was not particularly called to this notice?

A. Not particularly to this special one; to all of them.

Q. You stated, I think, that you saw this notice put into one of these bags?

77 A. Yes, sir.

Q. When was your attention first called to this subject of notices?

A. To this particular notice?

Q. Yes.

A. I don't remember now exactly when it was; some time I have known of it.

Q. About how long?

A. Have no recollection how long.

Q. Should you think it was six months after that time, or a year?

A. Don't remember at all.

Q. You state, madam, before the notice was deposited in the United States mail bag this notice was called back and the address written on the envelope and compared with the address appearing on the books of the association. Did you make that comparison yourself?

A. I saw it made.

Q. Did you make it yourself?

A. No, sir.

Q. Who was the person that made it?

A. One of my clerks.

Q. Do you know her name?

A. Don't know that I do.

Q. Did you at the time?

A. Yes, sir; of course I knew at the time.

Q. You stated you knew from the assessment book that the assessment notice was mailed. Have you any other knowledge

78 on the subject?

A. No, sir; except what I have stated.

Q. You have not?

A. No, sir.

Q. You judge, then, from examining the assessment book it was put into the bag?

A. I judge from the assessment book that it was put into the bag, and I saw it.

Q. And that, madam, is the reason why you said it was mailed; that it so appears from the assessment?

—. I know nothing about the mailing of it; I have nothing to do with the mailing. I saw it put into the bag; then they are handed over to Colonel Potter and he attends to the mailing of them.

Redirect examination:

(Paper shown witness.)

This paper now shown me is the notice of assessment No. 13, made April 1, 1884, and was sent to Henry H. Hamlin, and on the back of it is the answer that was received by the association in reply.

(Paper offered in evidence and marked Def't's Ex. "A.")

The notice of assessment No. 14 was addressed precisely the same as the notice of assessment No. 13, Exhibit "A."

The words that appeared on the envelope which enclosed each of these two notices—that is, notice No. 13 and notice No. 14—were identically the same.

GEORGE F. POTTER, of the city of New York, of lawful age,
79 being duly cautioned and sworn, deposes and says:

I am second vice-president of the Mutual Reserve Fund Life Association and have been an officer thereof since 1883, and have special charge of the assessment department and clerical force.

The book now shown me is called "Assessment Register," and in it is the name Henry H. Hamlin, and the number is 13544.

The address of Henry H. Hamlin, as appearing upon the books of the association, is "Mrs. H. H. Hamlin, Norwich, Connecticut." Assessment No. 14, dated June 2, 1884, was made on this certificate, and, according to the usual course of business of the association, notice of that assessment was sent to Henry H. Hamlin, at his post-office address, as appearing upon the books of the association.

The usual course of business was to compare the assessment notices and envelopes with the record as appearing upon the books. When so compared they were enclosed in the proper envelopes, sealed, stamped, and dropped into the mail bag. The mail bag was then closed up and taken to the post office, all under my watchful care and supervision, and this course has prevailed ever since I took charge of the business, early in 1883, and this course was followed as to No. 14 assessment.

Assessment No. 14 has never been paid on this certificate.

I saw the post-office bags furnished by the post office department for the purpose of sending out these notices at the time that No. 14

assessment went out. They were furnished by the post office
80 authorities of the city of New York; that assessment notices No. 14 were deposited in certain mail bags, as to which Mrs. Jones has testified, and were furnished by the post office department in the city of New York. I saw them at that time. I saw assessment notices of No. 14 in these post-office bags at that time.

The post-office bags containing notices of assessment No 14 after being closed up were taken to the post office in the city of New York and delivered to the post-office clerks. I know they were taken from the office of the association to the post office, because I went with them; I went with all of them. All the notices of assessment No. 14 were fully stamped, and the postage was fully paid on them before they were delivered to the post office or the post-office clerks. These bags were delivered to the postal authorities in the city of New York on the evening of May 31, 1884, which was Saturday. June 1, 1884, fell on a Sunday. Assessment No. 14 on certificate 13544, Henry H. Hamlin, was $16.00. It was never paid. The course of business that I have described was the course of business pursued as to the mailing of the notices of assessment No. 14.

(Paper shown the witness.)

That is a fac simile of assessment notice No. 14 sent to all the members when the blanks are filled up, and is a fac simile of the notice sent to Hamlin, leaving out the name, amount, and the number.

(Paper offered in evidence and marked Def't's Ex. "B.")

Cross-examination by Mr. LUCAS:

81 Q. How are you able to state specially that this particular notice of assessment No. 14 was sent to Henry H. Hamlin?

A. Because it so appears on the book, and I saw it mailed. That is reason I say it was mailed to Mr. Hamlin. It so appears on the books by the extension, the amount of his assessment being extended under the column of amount assessed for under assessment No. 14.

Q. When you say this notice was sent you do not state from your own personal knowledge and supervision of the matter, but that it so appears from the book?

A. Yes, sir; both. I have the supervision of all the details of this matter. I do not make the comparisons. I saw that particular letter put into the mail bag with the others.

Redirect examination:

I know of my own knowledge irrespective and independent of any book, that after a letter is deposited in a mail bag in our office the bag is closed up and then delivered to the post office, so that if any notice with reference to assessment No. 14 or any other assessment was deposited in the mail bag in the office of the association I know of my own knowledge that such assessment notice was mailed.

Q. Was your attention called as to whether this particular notice was sent or not?

A. No, sir.

Q. Your attention was not called to it at the time?

82 A. No, sir.

Q. Do you examine all these letters yourself?

A. I could not have the immediate carrying out of all the detail work, but have the supervision.

Q. The comparison?

A. I don't make the comparisons.

Q. So that you are unable to state whether any clerical error was made or not?

A. From my own personal knowledge, no.

FREDERIC T. BRAMAN, of lawful age, being duly cautioned and sworn, deposes and says:

I am secretary of the defendant association, and have held that office since March, 1882.

Mortuary assessments have been made six times a year since August 1, 1883. A change was made from four assessments a year to six by resolution of the board of directors at a regular meeting held July 11, 1883, at the home office, in the city of New York.

The following is the original resolution as passed on that day. I read from the record of minutes of the board of directors kept by me:

"Resolved, That hereafter the stated periods for making the mortuary assessments upon the members of this association under the provisions of the constitution shall be the first week days of February, April, June, August, October, and December."

83 I attach a correct copy of the defendant's constitution and by-laws in force January 10, 1883, and in force during all that year and the following year.

(Paper marked Defendant's Exhibit "C.")

A large percentage of assessment No. 14 was paid in by the members.

GEORGE F. POTTER, called as a witness on the trial in behalf of defendant, being duly sworn, testified as follows:

Direct examination by Mr. TAYLOR:

These assessments were all ordered by the executive committee of the defendant.

There were not at these times sufficient moneys in the death fund of the defendant to pay the then existing claims by death.

These assessments were and each of them was duly made and ordered.

(Paper shown witness.)

This paper was sent to Henry H. Hamlin and to all the members of the association with the notice of assessment made December 1, 1883, No. 11. It was part of the assessment notice.

The following part of said notice, the remaining portions not being deemed material, was thereupon read in evidence as follows:

"The members at their last annual meeting amended the constitution of the association so that the assessments shall be made
84 quarterly or such other stated periods as the board of directors may determine.

The directors have determined that it will suit the convenience of a large majority of our members and that the interest of the association will be better subserved to make the assessments bi-monthly, to wit, on the first week days of October, December, February, April, June, and August."

This notice was a part of assessment notice No. 11 and was mailed December 1, 1883, to Henry H. Hamlin, at the address upon the books, and to all other members of the association at that time.

Similar notices were also sent and formed a part of assessment notice No. 9, August 1, 1883; No. 10, October 1, 1883; also with No. 12, February 1, 1884, and the succeeding assessment notices.

Resolution referred to in the testimony of secretary F. T. Braman as passed July 11, 1883, by the board of directors was adopted pursuant to section five of article 11 of the constitution.

At all the times since Henry H. Hamlin became a member of the defendant association, beginning with August 1, 1883, assessments have always been made bi-monthly down to the present time on the first week days of the months of August, October, December, February, April, and June of each year, and assessments were not made at any other time, but were always made at these periods.

In September, 1884—about the 17th or 18th of the month—I was present at a meeting of the executive committee of the de-
85 fendant, at which time application was made for reinstatement of Henry H. Hamlin. This application was refused. When a member does not pay an assessment within the thirty days his policy lapses and he can only be reinstated on a medical examination, approved by the medical director and the executive committee. After the refusal of the executive committee to reinstate without the medical examination I wrote the representative of Hamlin that a medical examination would be necessary, pursuant to the constitution and by-laws of the association. Mr. Hamlin's representatives requested me to send them a blank. I sent them a blank in November, 1884, and on December 24, 1884, they returned it to me, and on its receipt by me it was submitted to James W. Bowden, medical director of the association, and he rejected it. This is his writing on it rejecting it, and the initials "J. W. B." were made by him, and this indicates his rejection.

Medical examination and rejection offered in evidence and marked Exhibit "K."

The last assessment was paid April 10, 1884, and is the one for which plaintiff's receipt, Exhibit 4, was given.

The assessment of June 2, 1884, was not paid; assessment of

August 1, 1884, was not paid; assessment of October 1, 1884, was not paid, and assessment of December 1, 1884, was not paid.

No assessments on this certificate were paid after April 10, 1884, which was assessment 13, made April 1, 1884.

It was admitted that the blank proofs of death furnished by the defendant to the plaintiff was done without prejudice to any and all rights of the defendant.

There never was any notice received by the defendant of
86 the non-receipt of the assessment of June 2, 1884, or the assessment of August 1, 1884, or of any other assessment by Hamlin or Mrs. Hamlin.

Defendant also offered in evidence notice of assessment 14, made June 2, 1884, marked Exhibit "H."

(Exhibit "A," being notice of assessment No. 12, made February 1, 1884, shown witness.)

This is the notice sent on the policy in this suit. I mailed myself all notices of assessment No. 12. This particular slip was mailed February 1, 1884, to Mrs. H. H. Hamlin, Norwich, Connecticut.

This paper forms part of the records of the defendant.

It was returned to the defendant through the mails on February 8, 1884, enclosing $16.00 to pay this assessment No. 12. It was then entered in the assessment book. This was done according to the defendant's usual course of business. Exhibit "B," being notice of assessment No. 13, made April 1, 1884, was the notice sent on the policy in this suit. I mailed all the notices of assessment No. 13. This notice was mailed April 1, 1884, to the same address, Mrs. H. H. Hamlin, Norwich, Connecticut. It was returned, and received by the defendant April 10, 1884, enclosing money for the payment of that assessment. It came from Mrs. H. H. Hamlin and the receipt was sent to her. Similar notices were sent to all the members of the association by mail in the usual course of business. All the assessments, beginning with assessment No. 9, made August 1, 1883, were paid regularly every two months up to and including
assessment No. 13, made April 1, 1884, since which time no
87 assessments were paid defendant on this certificate.

Cross-examined by Mr. LUCAS:

Mr. Lucas, attorney for Mrs. Hamlin, wrote the defendant the letter November 7, 1884, marked "Plaintiff's Exhibit 5."

I wrote the letter November 19, 1884, marked "Plaintiff's Exhibit 6."

Redirect examination:

The August assessment was not mailed to H. H. Hamlin, nor was any subsequent assessment, because where a member lapses for nonpayment under a mortuary call he forfeits all rights and no further notices are sent.

Assessments are called to pay death losses as they occur.

The constitution and by-laws, Exhibit "F," was adopted at an

annual meeting of the members of the association held in January, 1883, at its home office.

A notice of the annual meeting of the members in January, 1884, was sent to H. H. Hamlin and to all the members and directors of the association. It was sent to H. H. Hamlin with the assessment notice in December, 1883. That notice was returned to Hamlin December 5, 1884, with the money to pay the assessment. It was also published in the newspapers.

At that meeting, in January, 1884, the constitution was ratified and confirmed and a vote unanimously passed at said meeting ratifying and confirming the constitution and by-laws.

Recross:

88 A vote was passed at the meeting in January, 1884, ratifying and confirming the constitution and by-laws.

I suppose twelve or fourteen thousand notices of the assessment on August 1, 1884, were sent out to the members.

There could not have been any August assessment sent to H. H. Hamlin on his certificate because after a member ceases to pay he is not further assessed.

Defendant rests.

The plaintiff offered testimony for the purpose of proving that notice of said assessments to Mrs. H. H. Hamlin was not mailed by the defendant, as claimed by it, of which testimony the following is the substance:

WILLIAM K. CARUTHERS: I am the assistant postmaster at Norwich, Connecticut, and was during the whole of 1884.

Mrs. Hamlin had a lock-box in the post office.

I had charge of the post office.

The defendant then and there objected to any testimony of the witness as to any facts relative to the transactions in the Norwich post office on the ground that such evidence was immaterial, irrelevant, and incompetent on the question whether or not the notice was mailed in the New York post office by the defendant June 2, 1884; also on the ground that H. H. Hamlin was required to pay the assessment within thirty days from the first week day of
89 June, 1884, whether the assessment notice was mailed or not.

Objection overruled; to which ruling defendant's counsel then and there duly excepted on each ground under the objection.

Under the objection and exception of the defendant the witness was allowed by the court to further testify as follows, and the defendant was allowed an objection and exception to all of the testimony without repetition and on each and all of the grounds above stated:

The custom as to returning letters was that if letters have a return request they are returned if not called for, and a record of such letters is kept in the book of the department. I have looked through the months of June, July, and August, 1884, and there is no record

of any return of any letter to the Mutual Reserve Fund Life Association.

Mrs. Hamlin gave up her lock-box October 1, 1884.

She had had it for a number of years. The lock-box was rented by Mr. Hamlin and stayed in his name all the time.

Mr. Hamlin had his business letters come there.

He was in partnership in the firm of Hamlin & Co., and the mail of the partnership went into the box; also all of the mail belonging to the family. There were four mails daily from New York. I have heard of letters being lost in the mails. The record book is kept by the general delivery clerk. I am willing to swear that no letter addressed to Mrs. Hamlin was returned to New York. I know nothing about whether this letter was mailed in New York. It was more likely to be lost before it reached my office. Numer-
90 ous mails came that I did not see.

Mrs. H. H. HAMLIN recalled by defendant:

I had lock-box in 1884.

Objected to. Objection overruled. Exception.

The defendant thereupon objected to any testimony by this witness on the same ground, and also that whether or not the notice was received by her was immaterial, and that the fact that she did not receive it does not prove or tend to prove that it was not mailed; also on the ground that payment was required to be made within thirty days from the first week day in June and August, 1884, without reference as to whether assessment notice was or was not in fact mailed, and that this testimony is not evidence and does not show that the notice was not mailed.

Which objections were severally overruled, and the defendant then and there severally duly excepted to the ruling of the court, and under such ruling and exception of the defendant the following testimony was taken—

The defendant to have the right and benefit of such objections and exceptions as if repeated severally to each question:

Three children and a young lady by the name of Miss Fanning and myself only had access to the letter box.

Question. Where was Mr. Hamlin in June, 1884, and what was his condition?

Objected to by defendant on the ground that the physical condition of Mr. Hamlin and his whereabouts at that time are
91 immaterial and irrelevant. Objection overruled; to which ruling the defendant then and there duly excepted.

Answer. He was at the hospital at Providence, in June, 1884. He was then taken to the Middletown Hospital. He went to Providence November, 1883, and was not at home until he died.

Question. What was his mental condition?

Answer. He was insane when he went to the Providence Hospital till he died.

Objected to as immaterial and irrelevant.

The court thereupon ruled that the evidence was admissible as showing that H. H. Hamlin was not in Norwich and was not capable of receiving the letter. It is not defence that the letter was not received. It only goes to the question of mailing in New York. To this ruling of the court the defendant then and there duly excepted.

Question. Did you receive any notice of the June assessment, 1884, or any delinquent notice?

Objected to by defendant as immaterial and irrelevant; also on the ground that whether Mrs. Hamlin received any notice is immaterial; also upon the ground that it does not disprove that the notice was mailed, and also on the ground that it was the duty of H. H. Hamlin to pay or cause to be paid the assessment within thirty days from the first week day in June and August, 1884, whether the notice was received or not.

The court overruled the objections and each of them, and the defendant then and there duly and severally excepted to each ruling of the court. Under the above ruling the court thereupon
92 admitted the following testimony for the purpose of tending to prove the non-mailing of said notice; to which the same objections and exceptions were given — the defendant without repetition.

Answer. The April assessment was the last one I received. I received previous notices of assessment.

Question. When did you first get notice of this June assessment?

Objected to by defendant's counsel on the same grounds as above, and also on the further ground that it is immaterial when she got knowledge, and also immaterial whether she had knowledge or not under the provisions of the constitutions and by-laws.

Objection overruled; to which ruling defendant's counsel then and there duly excepted.

Answer. I learned through Mr. Attwell about the fourth or fifth of September.

Question. What did you do?

Objected to as immaterial as to what Mrs. Hamlin did at that time in September.

Objection overruled and defendant duly excepted.

Answer. I wrote to my brother-in-law, Mr. Attwell, at Lynn, Massachusetts, the first week in September.

Cross-examined by Mr. TAYLOR:

I had been accustomed to paying these assessments once every two months regularly.

I began to pay them in the fall of 1883, and I paid them
93 every two months to April, 1884. I let it run then until September, 1884, before I did anything more about it.

In the early part of September, 1884, my sister, Mr. Attwell's wife, was visiting me; we talked something about insurance, and when she went home my brother-in-law wrote me inquiring the name of the company in which their insurance was; I wrote him and told him. He then wrote me that he had learned from some persons who were members of that association that there had been an assessment in June, and wrote me to ask if I had paid it. This was in the early part of September—along about the fifth or sixth of September. I did not write to the company at all until latter part of September. I did not notify them in June of the non-receipt of the June assessment; I did not notify them in August of the non-receipt of the August assessment. I did not write to the association in any way until the latter part of September, 1884.

Redirect:

I had a conversation with my sister in August when she visited me.

FELIX A. CANOVA, called as a witness on behalf of the plaintiff, testified as follows:

I reside in the city of New York, and am in the store of J. P. Logan.

Question. Did you on September 6, 1884, offer to pay the premiums on Henry H. Hamlin's policy?

Objected to by defendant on the following grounds, first, on the ground of immateriality; secondly, that there is no allegation
94 in the pleadings as to tender; thirdly, tender on September 6, 1884, was not sufficient; fourthly, on the ground that the pleadings allege "the plaintiff duly performed and fulfilled," and that under such plea an excuse for want of due performance cannot be proved.

Objection overruled; to which rulings and each of them defendant's counsel then and there duly excepted.

Answer. I made the tender to the association at its home office, on Liberty street and Nassau street, New York city. I saw the cashier and offered to pay in premiums that were due.

The depositions of Lizzie H. Hamlin, daughter of plaintiff, aged 14; Frank A. Hamlin, son of plaintiff, aged 18; Edward S. Hamlin, son of plaintiff, aged 17, and Ella A. Farning, who resided with plaintiff, aged 28, were then read in evidence by the plaintiff's counsel.

Each of these witnesses testified that they always gave to their mother all letters which they took from the lock-box in the post-office, in the city of Norwich, addressed to either their father or mother.

Said depositions and each of them were objected to on the same grounds as above; which objections were severally overruled; to which ruling of the court defendant then and there duly excepted.

J. M. ATTWELL, a witness on behalf of the plaintiff, being duly sworn, testified as follows:

I am brother-in-law of the plaintiff. On October 6 I went to New York and tendered to the defendant money for June and Au-
95 gust assessments. After October 6 I tendered the money every two months, but in each case the tender was refused on the ground that Hamlin was not a member of the association.

All of which testimony was admitted under same objections of defendant's counsel.

Plaintiff rests.

Counsel for the defendant then renewed the motion to dismiss the complaint, and requested the court to direct a verdict for the defendant on the same grounds severally as were made at the close of the plaintiff's case in chief.

The court refuses so to do; to which ruling counsel for defendant duly excepts.

Counsel for defendant further requests the court as follows:

First. To direct a verdict for the defendant on the ground that there is no issue of fact in the case for the consideration of the jury

Second. On the ground that there was failure to pay assessment 14, made June 2, 1884, within thirty days from the first week day. of June, 1884.

Third. On the ground that there was a failure to pay assessment 14, made June 2, 1884, within thirty days from the mailing of the notice of such assessment to the address of H. H. Hamlin on the books of the defendant, according to its usual course of business.

Fourth. On the ground that there was failure to pay assessment 15, made August 1, 1884, within thirty days from the first week day of August, 1884.

Which said motions were and each of them was denied; to
96 which said rulings and each of them defendant's counsel then and there duly and severally excepted.

Defendant's counsel then moved to strike out all the evidence given showing or claiming to show the non-receipt of notice of assessment, upon the grounds—

First. That the non-receipt is no defense.

Second. It does not prove it was not mailed.

Third. It is not evidence on which the jury may find it was not mailed.

Which said motion was denied; to which said ruling defendant's counsel then and there duly excepted.

Defendant's counsel then requested the court to direct a verdict in favor of defendant on the ground that there was no dispute of the testimony of the defendant that the notices of assessments, 1884, No. 17, was mailed December 1, 1884, and the same was received, which notice of assessment contained a notice in these words:

"The directors have determined that it will suit the convenience of a large majority of our members and that the interest of the association will be better served to make the assessments bimonthly,

to wit, on the first week days of October, December, February, April, June, and August."

Also there is no dispute that the same notice was contained in preceding and subsequent notices.

The receipt of these notices is admitted, and therefore that notice of the assessment to be made on the first week day of June, 1884, was mailed and received is shown by uncontroverted evidence.

97 Which said motion was denied, and defendant's counsel then and there duly excepted.

Defendant's counsel then requested the court to direct a verdict for the defendant on the ground that by the terms of the constitution and by-laws of defendant, as modified by resolution of board of directors, pursuant thereto, fixing the dates, a failure to pay mortuary assessments within thirty days from the first week days of June, August, October, December, February, and April of each year forfeits membership and renders the policy null and void, whether notice of assessment was in fact mailed or not.

Which motion was denied, and counsel for defendant then and there duly excepted.

Defendant's counsel then requested the court to direct a verdict for the defendant on the ground that by the terms of the constitution and by-laws of defendant a failure to pay mortuary assessments wihin thirty days from the first week days of August, November, February, and May of each year forfeits membership and renders policy null and void, whether notice of assessment was in fact mailed or not.

Which motion was denied; to which ruling defendant's counsel then and there duly excepted.

Counsel for defendant requests the court to direct a general verdict for the defendant upon the proofs.

The court refused so to do; to which refusal counsel for the defendant duly excepts.

Counsel for the respective parties having summed up the case, the judge charged the jury as follows:

98 In this case the execution of the policy, the payment of the annual dues for the year during which the member whose life was insured died, and the payment of all but the last four mortuary assessments, the death of the insured, and the delivery of proofs of loss on April 1, 1885, are admitted.

The defence is that the policy became terminated by non-payment of the bimonthly mortuary assessment called for June 2, 1884, and due within thirty days thereafter.

The policy provides that mortuary assessments shall be paid within thirty days from the date of each notice, and that a notice addressed to a member at his post-office address, as appearing upon the books of the association according to the usual course of business, shall be deemed a sufficient notice, and proof of mailing the same according to the usual course of business of said association shall be sufficient proof of the delivery of said notice.

Under the policy it was incumbent upon the insurance company to mail a notice of a mortuary assessment directed to the member

at the post-office address which appeared upon the books of the association. It is not necessary to prove anything more. It is not necessary to show that the notice was received. It is a prerequisite to the forfeiture of the policy to show that the notice was mailed according to the usual course of business.

Upon the question of mailing notice of the June assessment depends the question of forfeiture, for no notice was sent of subsequent assessments.

99 Upon this point the defendant takes the burden of proof.

The testimony in regard to mailing comes from Mrs. Jones and Col. Potter. They testify in regard to the course of business, the care with which the notices are sent; that they are directed by one person and then called back or compared with the book by the aid of another person; that the June notices were sent in the usual way, and that the business was done with the usual precautions; that the usual printed return notice was printed on the envelope, and that the letter never came back to the office.

The plaintiff says that the notice was never sent, because, they say, it was never received, and that in the usual course of business it would have been received if it had been mailed.

If it is shown or if it has been found to your satisfaction that the notice of the June assessment was mailed, the non-reception is no defence; but the point in dispute is whether the notice was mailed. If the only evidence in the case was the testimony of the defendant's witnesses that a letter of June was mailed and that it was not received, I should say that the evidence against the fact of mailing was insufficient to submit to you.

There are, however, two additional facts: one, that the letter contained a return notice and that the letter was never returned, which tends to show two things: one, that it was not by mistake directed to the wrong town, because if it had been it would have

100 probably found its way back, and therefore tends to diminish the idea that the letter might have been lost or mislaid in the mail or have been sent to the wrong place. Another fact is that the letter, which is said to have been mailed about the 10th or 15th of July, is said not to have been received, which contained a similar return request printed upon the envelope, and the plaintiff says that it is quite doubtful that two letters should have been mislaid in the mail if properly mailed.

On the other hand, the defendant says that in the family of the plaintiff were three children or young people and a fourth adult person, all of whom had access to the lock-box, and that the probabilities that one of these children mislaid or forgot a letter of this kind are strong.

The three children might have received and mislaid, or it might have been received and had been forgotten; that events of this sort slip from the mind and leave no trace behind, and that the loss of of the letter after it got to Norwich or that forgetfulness of its reception are not unlikely circumstances.

Again, losses and thefts by mail are not uncommon events.

This question of fact is the great question of fact in the case.

Was the notice of the assessment of June sent or mailed to the address, as appears on the books, either in June or July? If it was mailed, then there was a forfeiture and the plaintiff
101 cannot recover. If it was not mailed, as claimed by the defendant, and if within thirty days from the time that the notice of such assessment, payment or tender of payment to the defendant was made by the plaintiff, then there was no forfeiture.

If no notice was given to the plaintiff of the June assessment until the first of September, the uncontradicted testimony of Mr. Canova is to the effect that there was on September 6th a valid tender of the two overdue assessments.

If there was not a forfeiture by the non-payment of the June assessment, the other and subsequent assessments, after September 6, were duly tendered.

The question in dispute is a narrow one, but an important one. It is for the jury to examine and weigh the testimony with care; with the same care that you would consider a case between two individuals of the same position. The fact that juries are supposed not to weigh with care and accuracy questions of fact in which corporations are concerned has tended to bring the system of trial by jury into disrepute.

Neither are you to be influenced in your examination of the case by the fact that the court has overruled the motions of the defendant upon questions of law as they have arisen in the case. If you find for the plaintiff, you will find in the sum of $10,000 less $64 and interest from the dates when the respective assessments were due to August 1, 1885, with interest on the balance for August 1, 1885.

Counsel for the defendant excepts to the above charge of the court in the following particulars:

102 First. To the charge that it was incumbent upon the defendant to mail a notice of a mortuary assessment directed to the member at the post-office address which appeared upon the books of the association.

Second. To the charge that it is a prerequisite to the forfeiture of the policy to show that the notice was mailed according to the usual course of business.

Third. To the charge that upon the question of mailing of the June assessment depends the question of forfeiture.

Fourth. To the charge that upon this point the defendant takes the burden of proof.

Fifth. To the charge if it (notice of June assessment) was not mailed as claimed by defendant, and if within thirty days from the time that the notice of such assessment, payment, or tender of payment to defendant was made by plaintiff, then there was no forfeiture.

Sixth. To the charge if there was not a forfeiture by the non-payment of the June assessment the other and subsequent assessments were duly tendered.

Defendant's counsel further requests the court to charge the jury as follows:

First. That the defendant is an association of persons for
103 the purpose of mutual insurance and protection, and that the members of this association are members of a mutual association, and as such they are bound by the constitution and by-laws.

The court refuses so to charge, and to this refusal to charge as requested counsel for defendant duly excepts.

Second. That there is no evidence that Henry H. Hamlin ever notified the home office in writing of a failure to receive a notice of assessment on or before the first day of June, 1884.

The court refuses so to charge, and to this refusal to charge as requested counsel for defendant duly excepts.

Third. That there is no evidence that Henry H. Hamlin ever notified the home office in writing of a failure to receive a notice of assessment on or before the first day of August, 1884.

The court refuses so to charge, and to this refusal to charge as requested defendant's counsel duly excepts.

Fourth. That inasmuch as it is undisputed that Henry H. Hamlin never notified the home office in writing of a failure to receive a notice of assessment on or before the first day of June, 1884, the jury must find for the defendant.

The court refuses so to charge, and to this refusal to charge as requested counsel for defendant duly excepts.

Fifth. That inasmuch as it is undisputed that Henry H. Hamlin never notified the home office in writing of a failure to receive a notice of assessment on or before the first day of August, 1884, the jury must find for the defendant.

104 The court refuses so to charge, and to this refusal to charge as requested counsel for defendant duly excepts.

Sixth. That inasmuch as it is undisputed that Henry H. Hamlin failed to pay the June, 1884, assessment within thirty days from the first day of June, 1884, the jury must find that membership of Henry H. Hamlin was forfeited and the verdict must be for the defendant.

The court refuses so to charge, and to this refusal to charge as requested counsel for defendant duly excepts.

Seventh. That inasmuch as it is undisputed that Henry H. Hamlim failed to pay the August, 1884, assessment within thirty days from the first day of August, 1884, the jury must find that the membership was forfeited and the verdict must be for the defendant.

The court *so* refuses so to charge, and to this refusal to charge as requested counsel for defendant duly excepts.

Eighth. That it is immaterial whether the notice of the June, 1884, assessment was ever received by said Henry H. Hamlin or by the plaintiff.

The court refuses so to charge except as charged, and to this refusal to charge as requested counsel for defendant duly excepts.

Ninth. That there is no evidence in the case that any legal tender of the June assessment was made to the defendant.

The court refuses so to charge, and to this refusal to charge as requested counsel for defendant duly excepts.

105 Tenth. That if the jury find that there was no legal tender made to defendant of the June assessment the verdict must be for the defendant.

The court refuses so to charge, and to this refusal to charge as requested counsel for defendant duly excepts.

Eleventh. That the fact that the plaintiff did not receive the notice of June assessment is not sufficient to warrant you to find that the notice was not mailed.

The court refuses so to charge otherwise than it had charged, and to this refusal to charge as requested counsel for defendant duly excepts.

Twelfth. That the notice of June, 1884, assessment, according to the usual course of business of the defendant, was on the 31st day of May, 1884, duly deposited and mailed in the post office in the city of New York, with postage paid thereon, addressed to said Henry H. Hamlin, at his post-office address appearing upon the books of the association, and the proof of this is uncontradicted.

The court refuses so to charge, and to this refusal to charge as requested counsel for defendant duly excepts.

Thirteenth. That said notice of the June assessment having been, according to the usual course of business of the defendant, duly deposited and mailed on May 31st, 1884, in the post office of the city of New York, with postage paid thereon, addressed to said Henry H. Hamlin at his post-office address as it appeared upon the books of defendant, and no payment of the same having been made within thirty days from June 2, 1884, your verdict must be for the defendant.

106 The court refuses so to charge, and to this refusal to charge as requested counsel for defendant duly excepts.

Fourteenth. That the burden of proof is upon the plaintiff to overthrow the testimony offered by defendant that notice was sent, and unless she makes out that it was not sent by a preponderance of evidence the verdict must be for the defendant.

The court refuses to charge otherwise than it had charged, and to this refusal to charge as requested counsel for defendant duly excepts.

Fifteenth. Proof by plaintiff that she did not receive the notice will not establish the fact that it was not sent.

The court refuses to charge otherwise than it had charged, and to this refusal to charge as requested counsel for defendant duly excepts.

The jury retired and brought in a verdict for the plaintiff for the amount claimed, namely, nine thousand nine hundred and thirty-six dollars, with interest from August 1, 1885.

On motion of defendant's counsel, the court directs a stay of proceedings herein for sixty days to enable defendant's counsel to pre-

pare and file their bill of exceptions, and within which they may move for a new trial.

And thereupon the foregoing bill of exceptions was duly presented and allowed by the court at the April term of said court, being the term of the court at which said cause was tried; and in testimony whereof the judge who tried said cause did at said term sign and seal the said bill of exceptions and allow the same.

N. SHIPMAN, [L. S.]
District Judge.

107 EXHIBIT 1.

Mutual Reserve Fund Life Association.

Number 13544. Age, 44.

Bryant building, corner Nassau & Liberty streets, New York.

In consideration of the statements, representations, and warranties contained in the application for this certificate of membership and of the admission fee paid and of the dues to be paid for expenses on or before the thirtieth day of June in every year during the continuance of this certificate and of all mortuary assessments, as per table endorsed hereon, payable at the principal office of the association, in the city of New York, within thirty days from the date of each notice, the Mutual Reserve Fund Life Association does hereby receive Henry H. Hamlin, of Norwich, county of New London, State of Connecticut, as a member of said association.

Whenever the death fund of the association is insufficient to meet the existing claims by death an assessment shall be made upon the entire membership in force at the date of the last death; the same to be apportioned among the members according to the age of each member for such a sum as the executive committee may deem sufficient to cover said claims, and the net amount received from such assessment (less twenty-five per cent. to be set apart for the reserve fund) shall go into the death fund.

Within ninety days after receipt of satisfactory evidence to the association of the death of the above-named member during
108 the continuance of this certificate of membership there shall be payable to Sarah C. Hamlin (wife), of Norwich, county of New London, State of Connecticut, if living at the time of said death, otherwise to the legal representatives of said member, the sum of ten thousand dollars from the death fund of the association at the time of said death or from any moneys that shall be realized to the said fund from the next assessment to be made, as hereinabove set forth, and no claim shall be otherwise due or payable except from the reserve fund, as hereinafter provided.

The net earnings of the association, together with the twenty-five per cent. of the net receipts from each assessment, shall constitute a reserve fund, which shall be deposited with a trust company and be securely invested in United States bonds, mortgages, or other interest-bearing securities by said trust company, as trustee, for the exclusive benefit of the members of the association, and the interest on

the same as it accrues shall be placed by the said trustee to the credit of the death fund.

The reserve fund above $100,000 and in excess of sums represented by outstanding bonds shall be applied to the payment of claims in excess of the American experience table of mortality and when any claim by death is due to making up any deficiency that may then exist in the death fund.

After the expiration of each period of five years during the continuance of this certificate of membership a bond will be issued (bearing interest at the rate of four per cent. per annum, payable annually to the death fund) for an equitable proportion of
109 the reserve fund, and the principal of said bond shall be available ten years from its date towards paying future dues and assessments under this certificate, and should membership hereunder cease, by death or otherwise, any portion of said principal not thus used shall be applied to increase the bonds issued at the next quinquennial apportionment to other members of the association holding certificates issued during the same year as this certificate, and at which apportionment the rate of assessments may be thereafter changed to correspond with the actual mortality experience of the association.

No alternative of the terms of this contract shall be valid and no forfeiture thereunder shall be waived unless such alteration or waiver shall be in writing and signed by the president and one other officer of the association.

No agent of the association has authority to make, alter, or discharge contracts, waive forfeitures, extend credit, or grant permits.

This certificate is not binding until the first payments due thereunder shall have been fully received in cash by the association or by some agent authorized to receive the same and during the life of the said member, and shall be subject to all the provisions and stipulations contained in the constitution and by-laws of this association, with the amendments thereto.

A notice addressed to a member at his post-office address as appearing upon the books of the association, according to its
110 usual course of business, shall be deemed a sufficient notice, and proof of mailing the same, according to the usual course of business of said association, shall constitute and be deemed and held sufficient proof of compliance herewith on the part of said association.

Written notice of all assignments to be valid must be received and approved by the association, and the beneficiary or assignee must possess an insurable interest in the above-named member equal to the amount assigned.

This certificate is issued and accepted subject to the express condition that if any of the payments above stipulated shall not be paid when due at the office of the association, in the city of New York, or to an agent of the association furnished with a receipt signed by its president, secretary, or treasurer, or if the member during the continuance of this certificate shall engage in blasting, mining, submarine, or aeronautic operations, or the production of highly inflam-

mable or explosive substances, or upon a railroad as brakeman or baggageman or as conductor of a freight train, or in working or managing a steam-engine in any capacity, or shall engage in service upon a sailing vessel, or shall enter any military or naval service whatsoever (the militia when not in actual service excepted) without the consent of this association therefor in either of the foregoing cases given in writing by the president or secretary thereof, or if the member shall die by his own hand within two years from the date of this certificate, whether sane or insane, or if any of the statements, answers, or declarations made in the application for this cer-
111 tificate, which application is hereby referred to and made a part hereof, are in any respect untrue, then and in each and every such case this certificate shall be null and void, and all payments made thereon shall be forfeited to the association.

In witness whereof the said Mutual Reserve Fund Life Association has caused its corporate seal to be hereunto affixed
Examined. and these present to be signed by its president or vice-
F. H. F. president and secretary, at the city of New York, this 2d day of July, one thousand eight hundred and eighty-
[SEAL.] three.

J. M. STEVENSON,
Ass't Secretary.
E. B. HARPER, *President.*

Deed of Trust with the Central Trust Company of New York.

Agreement.

This agreement, made the 18th day of October, 1882, between the Mutual Reserve Fund Life Association, a corporation duly organized under the laws of the State of New York and located in the city of New York, party of the first part, and the Central Trust Company of New York, a corporation duly chartered by said State and located in said city of New York, as trustee, party of the second part, witnesseth:

That, the said party of the first part desiring to set aside a
112 reserve fund for the exclusive benefit of its members, the said party of the second part hereby agrees to receive the same and any further additions thereto, as trustee, upon the following conditions:

First. Such rate of interest shall be payable semi-annually by said party of the second part on the current deposits to the credit of said reserve fund as shall be from time to time mutually agreed upon.

Second. Said trust company shall from time to time, upon the written order of the president of said association, invest said fund or any portion of it in such United States bonds, State, county, or city securities, or on such bond and mortgage as shall be designated by the board of directors of said association and approved by the president of said trust company. Said securities shall be taken only

in the name of said association, and shall be held by said trust company subject to the conditions of this contract and with power of attorney from said association to collect the interest on the same. Any such securities shall be sold by said trust company upon the written order of the president of said association, accompanied by a certified copy of the vote of the board of directors of said association authorizing such sale, and the proceeds shall be deposited to the credit of the reserve-fund account with the said party of the second part.

Third. The semi-annual interest on the current deposits and the interest on investments shall, as it matures, be transferred to the credit of the death-fund account of the association: Provided,
113 That at the time of the maturing of any such interest the constitution of the association does not provide otherwise for its appropriation.

Fourth. Upon receipt of a certified copy of a vote of the board of directors of said association authorizing the transfer of any portion of said reserve fund to the death-fund account above mentioned such transfer shall be made by said trust company, but in every case the resolution of the board of directors authorizing such transfer shall state that such transfer is authorized by sections 3 and 4 of article XI of the constitution of the association.

Fifth. If the board of directors of said association shall for any reason deem it to be expedient to order transfer of the whole or any portion of said reserve fund, including the investments, to any State insurance department or to any other trust company organized under the laws of the State of New York, such transfer shall be made by said party of the second part: Provided, That no such transfer shall be made to any trust company until the delivery to said party of the second part of a certified copy of the contract under which the designated trust company shall accept the transfer; said contract to be indorsed as approved by one of the justices of the supreme court of the district in which the principal office of said association shall be located.

Sixth. Said party of the second part shall be allowed a reasonable compensation for making investments of the reserve fund and collecting interest on the same and for realizing on any of the securities of said fund and for any authorized expenses of any
114 litigation arising out of this contract without fault of the party of the second part.

Seventh. In the case of a dissolution of the party of the first part the entire reserve fund shall be divided among the then members of the association proportionally to the gross amount of assessments paid by said members respectively to said association, — shall be distributed in such other equitable manner as the courts shall direct.

Eighth. The party of the second part is to be answerable only for its own default, malfeasance, or negligence in carrying out this agreement.

In witness whereof the party of the first part and the party of the second part, as trustee, have hereunto caused to be affixed their re-

spective corporate seals, and their respective presidents and secretaries have hereunto set their hands this 18th day of October, 1882.

MUTUAL RESERVE FUND LIFE ASSOCIATION,

[SEAL.] By E. D. HARPER, *President.*
F. T. BRAMAN, *Secretary.*

CENTRAL TRUST COMPANY OF NEW YORK,

[SEAL.] By H. F. SPAULDING, *President.*
CH. P. BABCOCK, *Secretary.*

—— —, 188–.

Received of the Mutual Reserve Fund Life Association — dollars in full for all claims under this certificate, No. —, on the life of —— ——, deceased.

—— ——,
Beneficiary.
—— ——,
Beneficiary.

Witness:
—— ——.

115 *Table of Rates.*

Admission fee.

$1,000, $8.00; $2,000, $12.00; $3,000, $15.00; $5,000, $20.00; $10,000, $30.00.

Dues.

The dues for expenses are limited to $2.00 on each $1,000, payable annually in advance.

Assessment Rate Table.

No assessments will be made while there remains in the death fund a sum sufficient to pay the existing claims in full. The basis of the assessment rate for each member, according to the age taken at the nearest birthday, on each $1,000 shall be as follows:

Age.	Rate.
15 to 25	$1 00
26	1 02
27	1 04
28	1 06
29	1 08
30	1 10
31	1 12
32	1 14
33	1 16
34	1 20
35	1 24
36	1 28

Age.	Rate.
37	$1 32
38	1 36
39	1 40
40	1 44
41	1 48
42	1 52
43	1 56
44	1 60
45	1 64
46	1 68
47	1 72
48	1 76
49	1 80
50	2 00
51	2 25
52	2 50
53	2 75
54	3 00
55	3 25
56	3 50
57	3 75
58	4 00
59	4 25
60	4 50
61	5 00
62	5 50
63	6 00
64	6 50
65	7 00

This association is not required by law to maintain the reserve which is required of ordinary life insurance companies.

116 No. 13544. The dues and assessments on this certificate are payable to the association direct. Agents are only authorized to collect the same on presentation of receipts signed by its president, secretary, or treasurer. Mutual Reserve Fund Life Association, Bryant building, cor. Liberty & Nassau Sts., New York. Certificate of membership. Date, June 30th, 1883. Amount, $10,000; admission fee, $30; annual dues, $20. Members must send the New York office of the association prompt notice of any change in post-office address. Always give number of certificate in writing to the home office.

117 EXHIBIT 2.

The Mutual Reserve Fund Life Association of New York.

Claimant's Oath.

Mutual Reserve Fund Life Association, N. Y.
Received.

Name of deceased in full? Date of death?

Henry H. Hamlin; February 17th, 1885.

Number, date, and amount of certificate in the Mutual Reserve Fund Life Association?

No. 13544; date, July 26th, 1883; $10,000.

Claimant's name and residence?

Sarah C. Hamlin, Norwich, Connecticut.

Where had deceased lived and visited for his health since above certificate was issued and for two years prior thereto?

He resided in Norwich, Conn., and was doing business in New York city up to the time he was taken to Bellevue Hospital, Providence, R. I., Butler Hospital, and from there to Middletown, Conn., Insane Retreat, where he died.

The several occupations of deceased since the above certificate was issued?

He was a commission merchant.

Place and date of birth of deceased?

Place of birth.	Date of birth.	Year.	Month.	Day.
Sidney, Maine	September 13, 1839	1839	September	13

From what source of knowledge or information do you fix the place and date of birth?

118 By what he told me and from the record in the family, which is now in my possession.

Name, age, and address of each of the claimant, and relationship to deceased, if any?

Name in full.	Age.	Relationship.	Full address of each.
Sarah C. Hamlin	44	Widow	Norwich, Connecticut.

a. In what capacity or by what title do you make the claim?

a. Widow.

b. Are you legally entitled to receive the entire amount payable on the certificate?

b. Yes.

c. If not related, have you any interest in the life of the assured?

c. —.

d. How was that interest acquired?

d. —.

e. If a creditor, state the actual amount of indebtedness due you from the deceased, how and when did it accrue.

e. —.

How long had you known deceased?

Nineteen years.

a. When did health of deceased first begin to be affected?

a. Not till he was taken to Bellevue Hospital, to my knowledge.

b. Romote cause of death?

b. Cannot state.

119 *c.* Duration of illness?

c. From in October, 1883, to time of death.

a. Immediate cause of death?

a. General paralysis of the insane.

b. Give every particular relating to the cause and circumstances of the sickness and death of deceased.

b. I have no personal knowledge relative to the cause or circumstances, and can only say what was told me by the medical attendants at Middletown Asylum.

c. What ailments, diseases, illness, weakness, infirmities, disabilities, or injuries has deceased had since the date of the above certificate and for two years prior thereto? State facts fully.

c. I think he was at Bellevue Hospital the first I heard or knew of any. He had no disease of any kind, to my knowledge, for two years before the date of the certificate.

Name and address of attending physician during last illness?

A. M. Shew and attendants, Middletown, Conn.

Name and residence of every physician who attended or was consulted or who prescribed for deceased since the date of the above certificate and for two years prior thereto?

Dr. Sawyer, Butler Hospital, Providence, R. I.; Dr. Shew, Middletown Asylum, Conn.

State distinctly the habits of the deceased with reference to the use of spirituous or fermented liquors, opium, or other narcotics.

He did not use them at all.

120 State whether deceased used any patent or proprietary medicines or other preparation or mixture or compounds for any complaint, weakness, or disease since the date of above certificate and for two years prior thereto. If so, state kind used, when, and for what.

Not to my knowledge.

Was the death of deceased caused by his own hand or acts or in consequence of a duel or in violation of any law?

No.

In what other companies or societies, and to what amount in each, was life of deceased insured?

None.

In case of coroner's inquest, furnish the association with the verdict of the jury and all the evidence on which such verdict was based?

No coroner's inquest.

Did deceased make any assignment or will disposing or changing in any manner the payment of this insurance?

No.

Give name and address of five persons (not relatives) who were acquainted with deceased.

Name.	Residence.
Frank Johnson	Norwich, Conn.
Byron Boardman	Norwich, Conn.
Charles F. Gear	Norwich Town, Conn.
James H. Vergason	Do.
Charles W. Corey	Greenville, Conn.

Give name and residence of clergyman who officiated at
121 funeral of deceased.

S. G. Davis, Norwich, Conn.

a. Were any payments, dues, or mortuary assessments under said certificate unpaid at time of death of said deceased?

There were, but the same were not paid because the Co. would not receive them.

b. Were all payments, dues, or mortuary assessments under said certificate, payable prior to said death, paid to the association prior thereto?

All payments paid of which notice had been given, and those not paid the party whose duty to pay has always been ready and willing to pay.

c. State when last payment was made.

The annual due of June 30th, 1884.

Claimant's signature: SARAH C. HAMLIN.

Oath.

STATE OF CONNECTICUT, }
County of New London, } *ss:*

I, Sarah C. Hamlin, the claimant above named, having been duly sworn, do on my oath depose and say that I am the person who made and subscribed the foregoing answers, and that I have carefully read the above questions and answers thereto and understand the same; that each and every of said answers are full, complete, and true, and are made for presentation to the Mutual Reserve Fund Life Association to make claim for the moneys that may be payable under the above certificate.

Claimant's signature: SARAH C. HAMLIN.

122 Subscribed and sworn to before me, a notary public in and for the county and State above named, on this the 13th day of March, A. D. 1885.

WM. H. JENNINGS, JR.,
Notary Public. [SEAL.]

(Attach certificate of authority of officer.)

No. 2.

Attending Physician's Oath.

All answers must be in the physician's own handwriting.

Your name, residence, and post-office address?

Abram Marvin Shew, Middletown, Conn.

How long have you practiced as a physician and from what college did you graduate and when?

Have practiced 21 years; graduated from Jefferson Medical College, 1864.

Name of deceased in full?

Henry H. Hamlin.

Place and date of death?

Middletown, Conn. (Hospital for Insane), Feb'y 17, 1885.

How long had you known deceased?

From June 19, 1884, to Feb'y 17, 1885.

a. How long have you been the medical adviser of deceased?

a. Do., do., do., do., do., do., do., do., do., do.

b. Were you the attending physician during the last illness of deceased?

123

b. Yes.

a. What had been the several occupations of deceased?

a. Salesman.

b. The last place of residence of deceased?

b. Norwich, Conn.

c. What places has he visited for his health since the date of certificate and for two years prior thereto?

c. —.

a. What was age of deceased?

a. 45.

b. From what source of knowledge or information do you fix the age?

b. Information given on patient's admission to the hospital.

c. Was he apparently older than age above given?

c. No.

When did the health of deceased first begin to be affected?

Said to have begun in autumn of 1883.

Duration of illness or ailments?

About 17 months.

Duration of last illness?

Do., do., do., do., do.

Date of your first visit or prescription in last illness?

June 19, 1884.

124

Date of last visit?

Feb'y 17, 1885.

a. State the remote cause of death. If from disease, give the predisposing causes, date of the first appearance of its symptons, its history, and the symptoms present during its progress.

a. General paralysis of the insane; cause not known; symptoms, delusions of wealth and power, indistinct articulation, shuffling gait.

b. State the immediate cause of death.

b. Epileptiform convulsions.

c. If from any cause other than disease, state the medical and other facts connected therewith.

c. —.

d. Was a post-mortem examination made? By whom and with what results?

Name.	Residence.
Frank Johnson	Norwich, Conn.
Byron Boardman	Norwich, Conn.
Charles F. Gear	Norwich Town, Conn.
James H. Vergason	Do.
Charles W. Corey	Greenville, Conn.

Give name and residence of clergyman who officiated at
121 funeral of deceased.

S. G. Davis, Norwich, Conn.

a. Were any payments, dues, or mortuary assessments under said certificate unpaid at time of death of said deceased?

There were, but the same were not paid because the Co. would not receive them.

b. Were all payments, dues, or mortuary assessments under said certificate, payable prior to said death, paid to the association prior thereto?

All payments paid of which notice had been given, and those not paid the party whose duty to pay has always been ready and willing to pay.

c. State when last payment was made.

The annual due of June 30th, 1884.

Claimant's signature: SARAH C. HAMLIN.

Oath.

STATE OF CONNECTICUT, }
County of New London, } *ss:*

I, Sarah C. Hamlin, the claimant above named, having been duly sworn, do on my oath depose and say that I am the person who made and subscribed the foregoing answers, and that I have carefully read the above questions and answers thereto and understand the same; that each and every of said answers are full, complete, and true, and are made for presentation to the Mutual Reserve Fund Life Association to make claim for the moneys that may be payable under the above certificate.

Claimant's signature: SARAH C. HAMLIN.

122 Subscribed and sworn to before me, a notary public in and for the county and State above named, on this the 13th day of March, A. D. 1885.

WM. H. JENNINGS, JR.,
Notary Public. [SEAL.]

(Attach certificate of authority of officer.)

No. 2.

Attending Physician's Oath.

All answers must be in the physician's own handwriting.

Your name, residence, and post-office address?

Abram Marvin Shew, Middletown, Conn.

How long have you practiced as a physician and from what college did you graduate and when?

Have practiced 21 years; graduated from Jefferson Medical College, 1864.

Name of deceased in full?

Henry H. Hamlin.

Place and date of death?

Middletown, Conn. (Hospital for Insane), Feb'y 17, 1885.

How long had you known deceased?

From June 19, 1884, to Feb'y 17, 1885.

a. How long have you been the medical adviser of deceased?

a. Do., do., do., do., do., do., do., do., do., do., do.

b. Were you the attending physician during the last illness of deceased?

123

b. Yes.

a. What had been the several occupations of deceased?

a. Salesman.

b. The last place of residence of deceased?

b. Norwich, Conn.

c. What places has he visited for his health since the date of certificate and for two years prior thereto?

c. —.

a. What was age of deceased?

a. 45.

b. From what source of knowledge or information do you fix the age?

b. Information given on patient's admission to the hospital.

c. Was he apparently older than age above given?

c. No.

When did the health of deceased first begin to be affected?

Said to have begun in autumn of 1883.

Duration of illness or ailments?

About 17 months.

Duration of last illness?

Do., do., do., do., do.

Date of your first visit or prescription in last illness?

June 19, 1884.

124

Date of last visit?

Feb'y 17, 1885.

a. State the remote cause of death. If from disease, give the predisposing causes, date of the first appearance of its symptons, its history, and the symptoms present during its progress.

a. General paralysis of the insane; cause not known; symptoms, delusions of wealth and power, indistinct articulation, shuffling gait.

b. State the immediate cause of death.

b. Epileptiform convulsions.

c. If from any cause other than disease, state the medical and other facts connected therewith.

c. —.

d. Was a post-mortem examination made? By whom and with what results?

d. No.

Was the death of deceased caused or induced or hastened by the use of spirituous or fermented liquors, opium or other narcotics?

Not so far as known.

Was the death of deceased caused or accelerated or aggravated by his own hand or acts?

Do. do. do. do. do. do.

Had deceased ever had any other disease, acute or chronic, or had he ever had any injury or infirmity of which you have any knowledge or information? If so, what and when?

Do. do. do. do. do do. do. do.

125 Was there anything in the habits or mode of life of deceased predisposing to disease?

Do. do. do. do. do. do. do. do.

Had the deceased at any time, to your knowledge or information, had or been affected with any organic or functional disease or weakness? If so, what? State particulars fully.

Only such organic disease of the brain as is characteristic of his mental disease.

Give names and residence of physicians who have at any time attended or prescribed for deceased.

——— ———.

Do you know that the said deceased and the person claim- to be insured by the certificate of the Mutual Reserve Fund Life Association of New York mentioned in the foregoing claimant's oath is one and the same person?

Yes.

Did deceased use spirituous liquors or fermented liquors; if so, to what extent and with what effect?

Not to my knowledge.

Physician's signature: ABRAM MARVIN SHEW, *M. D.*

Oath.

STATE OF CONNECTICUT, } ss:
County of Middlesex, }

I, Abram Marvin Shew, the physician above named, having been duly sworn, do on my oath depose and say that I am the person who made and subscribed the foregoing answers, and that I have carefully read the above questions and answers thereto and under-

126 stand the same; that each and every of said answers are full, complete, and true, and are made for presentation to the Mutual Reserve Fund Life Association to make claim for the moneys that may be payable under the above certificate.

Physician's signature: ABRAM MARVIN SHEW.

Subscribed and sworn to before me, a notary public in and for the county and State above named, on this the 19th day of March, A. D. 1885.

CHAS. G. R. VINAL,
Notary Public.

[SEAL.]

(Attach certificate of authority of officer.)

STATE OF CONNECTICUT, } ss:
County of Middlesex, }

COUNTY CLERK'S OFFICE.

I, Charles G. R. Vinal, clerk of said county and clerk of the superior court for said county, which is a court of record, and keeper of the seal thereof, do hereby certify that Charles G. R. Vinal, Esquire, whose name is subscribed to the certificate or proof of acknowledgement of the annexed instrument and therein written, was at the time of taking such proof of acknowledgement a notary public within and for said State, dwelling in said county, duly commissioned and sworn and duly authorized to take the same.

And, further, that I am well acquainted with his handwrit-
127 ing, and that I verily believe the signature to the instrument hereto annexed, purporting to be his, is his genuine official signature.

I further certify that said instrument is acknowledged and in all respects executed according to the laws of this State.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, at Middletown, this 19th day of March, A. D. 1885.

[SEAL.] CHAS. G. R. VINAL, *Clerk.*

No. 3.

Officiating Clergyman's Oath.

(If there was no officiating clergyman, some clergyman who was acquainted with deceased.)

Your name, occupation, residence, and post-office address?

Samuel G. Davis; clergyman; Norwich, Conn.; address, Norwich, Conn.

Name of deceased in full.

Henry H. Hamlin.

Do you know that the said deceased and the person claimed to be insured by the certificate of the Mutual Reserve Fund Life Association of New York mentioned in the foregoing claimant's and physician's oath are one and the same person?

I do.

How long have you known the deceased?

I have known of him for about 8 months.

128 What was the age of deceased?

I should say about 45 years old.

What was the occupation and place of residence of deceased?

He resided in Norwich, and I understood he was engaged in business in New York.

What was the place and date of birth of deceased?

I learn from the widow of deceased and from the family Bible that he was born at Sidney, Maine, Sept. 13th, 1839.

Give number, date, and amount of certificate.

No. 13544; date, July 26th, 1883; $10,000.

What diseases has the deceased had since the date of said certificate?

I know nothing except what I have been told, which was that he was insane and insanity his disease.

What diseases, ailments, injuries, or infirmities has the deceased had or been afflicted with prior to the date of said certificate of which you have any knowledge or information? State particulars fully.

I know of none.

Did the deceased use spirituous or fermented liquors, opium or other narcotics; if so, to what extent?

I do not know.

Has the deceased at any time visited or traveled for the benefit of his health; if so, when and where?

I do not know.

Have you any interest in the above certificate or the proceeds thereof?

129 I have not.

Clergyman's signature: SAMUEL G. DAVIS.

Oath (Clergyman's).

STATE OF CONNECTICUT, }
County of New London, } *ss:*

I, Samuel G. Davis, the clergyman above named, having been duly sworn, do on my oath depose and say that I am the person who made and subscribed the foregoing answers, and that I have carefully read the above questions and answers thereto and understand the same, and each and every of said answers are full, complete, and true and are made for presentation to the Mutual Reserve Fund Life Association to make claim for the moneys that may be payable under the above certificate.

Clergyman's signature: SAMUEL G. DAVIS.

Subscribed and sworn to before me, a notary public in and for the county and State above named, on this the 13 day of March, A. D. 1885.

WM. H. JENNINGS, JR.,
[SEAL.] *Notary Public.*

(Attach certificate of authority of officer.)

No. 4.

Friend's Oath,

(Who must be a responsible householder.)

130 Your name, occupation, residence, and post-office address?

Charles H. Dillaby; tax collector; Warren St., Norwich, Connecticut.

Name of deceased in full?

Henry H. Hamlin.

Do you know that the said deceased and the person claimed to be insured by the certificate of the Mutual Reserve Fund Life Association of New York mentioned in the foregoing claimant's and physician's and clergyman's oath are one and the same person?

He was.

How long have you known the deceased?

Fifteen years.

What was the age of deceased?

Forty-five.

What was the occupation and place of residence of deceased?

Merchant; Norwich, Conn.

What was the place and date of birth of deceased?

Do not know.

Give number, date, and amount of certificate.

I cannot.

What diseases has the deceased had since the date of said certificate?

None to my knowledge, except his last sickness, the date of which I know not.

131 What diseases, ailments, injuries, or infirmities has the deceased had or been afflicted with prior to date of said certificate of which you have any knowledge or information? State particulars fully.

None.

Did the deceased use spirituous or fermented liquors, opium or other narcotics; if so, to what extent?

None, to my knowledge.

Has the deceased at any time visited or travelled for the benefit of his health; if so, when and where?

Nowhere, to my knowledge.

Have you any interest in the above certificate or the proceeds thereof?

None.

Signature of friend: CHARLES H. DILLABY.

Oath.

STATE OF CONNECTICUT, }
County of New London, } *ss:*

I, Charles H. Dillaby, the friend above named, having been duly sworn, do on my oath depose and say that I am the person who made and subscribed the foregoing answers, and that I have carefully read the above questions and answers thereto and understand the same, and each and every of said answers are full, complete, and true and are made for presentation to the Mutual Reserve Fund Life Association to make claim for the moneys that may be payable under the above certificate.

Friend's signature: CHARLES H. DILLABY.

Subscribed and sworn to before me, a notary public in and for

132 the county and State above named, on this the 26 day of March, A. D. 1885.

WM. H. JENNINGS, JR.,
Notary Public.

[SEAL.]

(Attach certificate of authority of officer.)

STATE OF CONNECTICUT, } ss:
County of New London, }

COUNTY CLERK'S OFFICE.

I, John C. Averill, clerk of the superior court within and for said county and keeper of the seal thereof, and of the commis-
[SEAL.] sions of justices of the peace, and of the commissioners of the superior court for said county, and of notaries public, do hereby certify that W. H. Jennings, Jr., Esq., was on the 4 day of February, 1884, ever since has been, and now is a notary public within and for and residing in said county, duly elected, commissioned, and sworn, having full power and authority by the laws of this State to take the acknowledgement of deeds and other instruments and certify to the same; also to administer oaths, to take affidavits and depositions out of court, and to give certificates thereof; that full faith and credit may and ought to be given to his official acts and attestations; that the signature to the instrument hereto annexed, purporting to be his, I believe to be his genuine official signature; that I am well acquainted with his handwriting, and that said instrument is executed, acknowledged, and duly authenticated according to the laws of this State.

133 In testimony whereof I hereunto set my hand and affix the seal of said court, at Norwich, in said county and State, on this 28 day of March, A. D. 1885.

JOHN C. AVERILL, *Clerk.*

Undertaker's Oath.

Your name, residence, and post-office address?
Amos D. Allen; Norwich, Conn.
Name of deceased in full?
Henry H. Hamlin.
Residence and occupation of deceased?
Norwich, Conn.; merchant.
Date of birth of deceased?
Do not — except by hearsay, but believe him to have been born in 1840.
Date and place of death of deceased?
Middletown, Conn.; Feb'y 17th, 1885.
Did you inter the deceased; when and where?
I did; February 21st, 1885; in South Watertown, Mass.
Do you know that the person interred by you and the person claimed to be insured by the certificate of the Mutual Reserve Fund Life Association of New York, mentioned in the foregoing claimant's, physician's, and friend's oath, are one and the same?
I do.

Signature of undertaker: AMOS D. ALLEN,
Of Firm of Henry Allen & Son.

134 *Oath.*

STATE OF CONNECTICUT, }
County of New London, } ss:

I, Amos D. Allen, the undertaker above named, having been duly sworn, do on my oath depose and say that I am the person who made and subscribed the foregoing answers, and that I have carefully read the above questions and answers thereto and understand the same; that each and every of said answers are full, complete, and true, and are made for presentation to the Mutual Reserve Fund Life Association to make claim for the moneys that may be payable under the above certificate.

Undertaker's signature: AMOS D. ALLEN.

Subscribed and sworn to before me, a notary public in and for the county and State above named, on this the 26th day of March, A. D. 1885.

WM. H. JENNINGS, JR., [SEAL.]
Notary Public.

(Attach certificate of authority of officer.)

Instructions.

No. 1. Claimant's oath is to be made by the person legally entitled to receive the money, who must state by what title he or she makes the claim, whether as the beneficiary named in the policy or as executor or administrator of a deceased beneficiary or as guardian or other legal representative of a minor or as a trustee or as assignee.

135 In case of assignment a sworn statement of interest must be made and a copy of the assignment furnished. Executors, administrators, and guardians must send exemplified copies of their appointment and certificate of qualification. Trustees, unless named in the certificate, must exhibit their authority.

No. 2. Attending physician's oath is to be executed by the physician attending the deceased in his or her last illness. If more than one physician was employed the oath of each must be obtained. The entire oath must be in the handwriting of the physician.

No. 3. Friend's oath is to be executed by some responsible householder intimately acquainted with the deceased, cognizant of his or her death, and not interested in the claim, and the clergyman's oath as per instructions in No. 3.

No. 4. Undertaker's oath is to be executed by the undertaker or sexton who interred the deceased. If necessary, it may, with slight change, be executed instead by the person who officiated at the interment.

In cases of diseases of the brain or from insanity full particulars as to the cause and duration of these diseases and information as to habits of deceased will be required.

In cases of suicide a certified copy of the verdict and of the evidence on which such verdict is based before coroners will invariably be required; and in all cases of sudden death, especially from un-

known cause, the particulars and result of any investigation held in the case will be required.

136 Every question must be distinctly and fully answered, and the association reserves the right to ask any further questions necessary under the circumstances of any particular case.

Each certificate must be sworn to before an officer duly authorized to administer oaths, and his authority and the genuineness of his signature must be attested by the clerk of a court of record.

If the oath be administered in a foreign country the official character of the person administering the same or of the clerk or other officer of a court certifying thereto must be authenticated by a consul or minister of the United States residing in such foreign country.

Filing.

The blanks on this side are to be filled at the association's office only.

The dues and assessments made prior to death under this certificate have not been paid in full.

Certificate No. 13544.
Date, ——.
Age, ——.
Name of beneficiary, —— ——.
Approved by—

—— ——, *Medical Director.*

Approved by—

—— ——, *Cashier.*

137 EXHIBIT 3.

Mutual Reserve Fund Life Association, Bryant building, 55 Liberty street.

NEW YORK, 2, 7, 1884.

Received of H. H. Hamlin $16.00 in payment of assessment No. 12 on certificate No. 13544.

C. R. BISSELL, *Treasurer.*

C. E. HITCHOCK, *Local Treas.*

The total business of this association exceeds $70,000,000 and the monthly business approximates $3,000,000, which demonstrates the great popularity of our "reserve-fund" system, and is an earnest that this association will eclipse all other life organizations in cheapness of cost, in number of members, in volume of business, and is a guarantee of future permanency and stability.

138 EXHIBIT 4.

Mutual Reserve Fund Life Association, Bryant building, 55 Liberty street.

NEW YORK, 4, 10, 1884.

Received of H. H. Hamlin $16.00 in payment of assessment No. 13 on certificate No. 13544.

C. R. BISSELL, *Treasurer.*

M. A. F., *Local Treas.*

The total business of this association exceeds $70,000,000 and the monthly business approximates $3,000,000, which demonstrates the great popularity of our "reserve-fund" system, and is an earnest that this association will eclipse all other life organizations in cheapness of cost, in number of members, in volume of business, and is a guarantee of future permanency and stability.

139 (EXHIBIT 5.)

NOV. 7TH, 1884.

GENTLEMEN: Mrs. Sarah C. Hamlin, wife of Henry H. Hamlin, whose life you insured for her benefit—No. of policy, 13554—has called upon me relative to the matter and desired me to write you about it. As I understand the fact, no notice was received of any dues to be paid, but that your claim notice was sent.

She is ready and willing to pay the dues, with the interest thereon, but I understand you decline to receive the same. Will you please let me hear from you on the subject?

Yours truly, SOLOMON LUCAS.

Mutual Reserve Fund L. As., N. Y.

140 EXHIBIT 6.

NEW YORK, *Nov. 19th*, 1884.

Solomon Lucas, Esq., Norwich, Conn.

DEAR SIR: Referring to yours of the 7th inst., with regard to which our secretary wrote you, stating that the writer would reply upon his return to the city, we beg to state that before we can consent to receive any payment upon certificate No. 13544 (Henry H. Hammelin) it will be necessary that we be furnished with a satisfactory re-examination, blank for which we herewith enclose.

Yours very truly, G. F. POTTER, *3rd V. P.*,
Per R. H.

141 DEFENDANT'S EXHIBIT A. Sept. 30, '86.

Assessment No. 13.

Mutual Reserve Fund Life Association, Bryant building, No. 55 Liberty street, corner Nassau street.

No. certificate, 13544. Amount due, $16.00.

NEW YORK, *April* 1, 1884.

Mr. H. H. Hamlin:

Satisfactory proofs of death having been presented to this association for the following claims (see slip enclosed), which have been approved, 1st, by a director not identified with the management; 2d, by the law firm of Taylor & Parker; 3rd, by the executive committee; 4th, by the medical director; 5th, by the cashier of the association, the executive committee has ordered an assessment to be made upon you for the amount as stated above, according to the terms of your certificate.

Our members should promptly secure a post-office order or registered letter from any post office or secure a draft on New York from any bank to the order of C. R. Bissell, treasurer, fill up the blank (see reverse side), and forward the same to the home office or pay the amount due in cash at this office.

The Central Trust Company of New York, with a paid-up capital and surplus of two and one-quarter millions of dollars, with assets exceeding fifteen millions of dollars, is the trustee of our reserve fund, and, as said reserve fund now exceeds one hundred and thirty-five thousand dollars, therefore the matured certificates in
142 the Mutual Reserve Fund Life Association become as reliable as U. S. bonds.

Attention is called to the fact that before the approval of death claims a written report is placed on file, with the proofs of loss, from one of our great mercantile agencies, showing the fact that the insured is actually deceased, as well as the facts relating to the cause of death.

Members at a distance, by remitting one advance assessment, will have no further assessment calls for four months. By remitting two advance assessments no further call will be made for six months.

Please remit promptly upon receipt of notice.

E. B. HARPER, *President.*
F. T. BRAMAN, *Secretary.*

NOTICE.—Please fill the blank below and return to this office with your remittance:

Dated at ——, *April 9th*, 1884.

Mr. C. R. Bissell, treasurer of the Mutual Reserve Fund Life Association, Bryant building, No. 55 Liberty St., cor. Nassau St., New York.

DEAR SIR: Herewith please find enclosed c'k on Merchants' Na.

B'k for sixteen dollars, in payment of assessment No. 13. My certificate is No. 13544. Will you please acknowledge receipt of same?

Name: MRS. H. H. HAMLIN.

My P. O. address is Norwich, Conn..

Are your notices addressed correctly? Yes.

143 NOTE.—Your prompt remittance will greatly aid your officers in solving the problem of furnishing insurance at actual cost.

DEFENDANT'S EXHIBIT B. Sept. 30, '86.

Assessment No. 14.

Mutual Reserve Fund Life Association, Bryant building, No. 55 Liberty street, corner Nassau street.

No. certificate, —. Amount due, $—, — cts.

NEW YORK, *June* 2, 1884.

Mr. —— ——:

Satisfactory proofs of death having been presented to this association for the following claims (see slip enclosed), which have been approved, 1st, by a director not identified with the management; 2d, by the law firm of Taylor & Parker; 3d, by the executive committee; 4th, by the medical director; 5th, by the cashier of the association, the executive committee has ordered an assessment to be made upon you for the amount as stated above, according to the terms of your certificate.

Our members should promptly secure a post-office order or registered letter from any post office, or secure a draft on New
141 York from any bank, or remit through any one of the 5,000 offices of the American Express Co. to the order of C. R. Bissell, treasurer. Fill up the blank (see reverse side) and forward the same to the home office, or pay the amount due in cash at this office.

The Central Trust Company of New York, with a paid-up capital and surplus of two and one-quarter millions of dollars, with assets exceeding fifteen millions of dollars, is the trustee of our reserve fund, and, as said reserve fund now exceeds one hundred and sixty-five thousand dollars, therefore the matured certificates in the Mutual Reserve Fund Life Association become as reliable as U. S. bonds. Attention is called to the fact that before the approval of death claims a written report is placed on file, with the proofs of loss, from one of our great mercantile agencies, showing the fact that the insured is actually deceased, as well as the facts relating to the cause of death.

Members at a distance, by remitting one advance assessment, will have no further assessment calls for four months. By remitting two advance assessments no further call will be made for six months.

Please remit promptly upon receipt of notice.

E. B. HARPER, *President.*
F. T. BRAMAN, *Secretary.*

NOTE.—The above assessment is payable only at the home office in New York or to such authorized collector as may be named above. Payments made to other persons are unauthorized and at the owner's own risk.

145 NOTICE.—Please fill the blank below and return to this office with your remittance:

Dated at ——, 1884.

Mr. C. R. Bissell, treasurer of the Mutual Reserve Fund Life Association, Bryant building, No. 55 Liberty St., cor. Nassau St., New York.

DEAR SIR: Herewith please find enclosed — dollars, in payment of assessment No. 14. My certificate is No. —. Will you please acknowledge receipt of same?

Name: —— ——.

My P. O. address is ——.

Are your notices addressed correctly?

NOTE.—Your prompt remittance will greatly aid your officers in solving the problem of furnishing insurance at actual cost.

146 DEFENDANT'S EXHIBIT C. Sept. 30, '86.

Constitution and By-Laws of the Mutual Reserve Fund Life Association, New York.

Constitution of the Mutual Reserve Fund Life Association, New York, incorporated in accordance with the provisions of an act of the Legislature of the State of New York passed 1875.

ARTICLE I.

Name, Location, and Objects.

SECTION 1. This association shall be known as the Mutual Reserve Fund Life Association, and its principal office shall be in the city of New York.

SEC. 2. The objects of this association are to promote the well-being of its members and to furnish substantial aid to their families or assigns in the event of a member's death.

ARTICLE II.

Board of Directors.

SEC. 1. The board of directors shall consist of twelve persons, and the whole number shall be elected at the annual meeting of members held on the 9th of February, 1882. The board of directors then elected shall divide themselves into four classes of three each. The

term of the first class shall be one year, the term of the second class two years, the term of the third class three years, and the term of the fourth class four years; and thereafter there shall be
147 elected annually one-fourth of the whole number of directors, who shall hold their offices for four years. In case of a failure to elect directors at any annual meeting of the association the directors whose regular term of office does not then expire shall have power, acting as a board, to elect directors to fill the vacancies caused by such failure to elect; and in case of any vacancy occurring in the board at any time the board of directors shall have power to fill such vacancies.

SEC. 2. The election for directors as above provided shall be held at the annual meeting, on the second Wednesday in January of each year, at the principal office of the association, in the city of New York, at such hour of the day as the executive committee shall direct, and notice of such election shall be published for three days preceding the day of election in two daily newspapers published in the city of New York. All such elections shall be by ballot, and a plurality of votes cast shall elect. The board of directors shall appoint three inspectors for each annual election.

SEC. 3. At every annual election of directors each member of the association in good standing shall be entitled to one vote in person or by proxy: Provided, That no vote by proxy or power of attorney shall be accepted unless registered with the register of the association at least ten days before the election at which it is offered.

SEC. 4. The corporate powers of the association shall be vested in the board of directors, who shall have power to adopt such
148 by-laws as they deem necessary not inconsistent with this constitution, and to amend the same, and to fix the amount and rate of assessments, fees, and dues, and to enact rules and regulations for the government of officers and employees and for the management of the affairs of the association.

SEC. 5. Any number of directors, not less than five, shall form a quorum for the transaction of business.

SEC. 6. The regular annual meeting of the board of directors shall be held after the close of the annual meeting of members, and such other meetings shall be held as the board shall determine upon.

ARTICLE III.

Officers.

SEC. 1. The officers of this association shall be elected annually by the board of directors, and shall consist of a president, one or more vice-presidents, secretary, treasurer, and medical director, and shall serve for one year or until their successors are chosen.

SEC. 2. The directors shall elect three of their number, who shall constitute an executive committee, who shall appoint such medical examiners as they deem necessary, audit death claims, and shall determine all salaries and expenses, and shall have the power to make contracts with general agents and others for the furtherance of the business of the association and for the benefit of its members.

They shall also exercise a general supervision over the busi-
149 ness of the association, subject to the approval of the board.

SEC. 3. For good and sufficient reasons to them apparent the board of directors may remove any officer or director and at once elect his successor; but such removal shall not be made except after thirty days' written notice given to the officer or director in question that proceedings will be taken at a meeting of the board of directors to be called for that purpose.

ARTICLE IV.

The President and Vice-President.

SEC. 1. The president shall preside at all meetings of the association, board of directors, and executive committee.

SEC. 2. In the absence of the president the vice-president shall preside and do all the acts devolving upon the president to perform.

SEC. 3. In the absence of both president and vice-president the 2d or 3d vice-president shall possess the power to perform the duties of the president.

ARTICLE V.

The Treasurer.

SEC. 1. The treasurer shall give a bond for the performance of his duties satisfactory to the board of directors, and for such sum as they shall determine.

SEC. 2. All monies received from assessments, after deduct-
150 ing the expenses incurred in collecting the same, State and county taxes, legal and other expenses in defending or protecting the association against the payment of unaudited or fraudulent claims, shall be deposited by the treasurer in some bank or trust company designated by the board of directors to an account to be known as "The mortuary account of the Mutual Reserve Fund Life Association," and shall only be withdrawn from said account by transfer on the order of the president and treasurer to the "reserve fund" and in settlement of death claims under the certificates of the association, said claims having been first approved by the executive committee of the association; and in all such cases checks on the mortuary account shall be signed by the president and treasurer of the association, and shall be made payable only to the beneficiaries under the respective certificates.

ARTICLE VI.

The Medical Director.

SEC. 1. The medical director, or a deputy appointed by the president, shall pass upon all applications for certificates of membership in the association, and no certificate shall be issued to any person without the approval of the medical director or said deputy.

ARTICLE VII.

Secretary.

151 SEC. 1. It shall be the duty of the secretary to keep all records of the association and to serve or cause to be served all notices or notifications personally or by mail.

He shall have charge of all books, papers, and supplies belonging to the association, attend to the correspondence, and, in general, do and perform all the acts pertaining to his office requisite and necessary for the procurement and continuance of the business for the general good of all its members.

He shall furnish a bond for the performance of his duties satisfactory to the board of directors.

ARTICLE VIII.

Membership.

SEC. 1. Only such persons who are in good health, who shall pass a rigid medical examination and be approved by the medical director or his deputy and the executive committee, may become members of the association, subject to all the requirements for membership set forth in the constitution, by-laws, and in the certificate of membership.

ARTICLE IX.

Fees, Dues, and Assessments.

SEC. 1. The amount of the fees and dues to provide for the agency and general expenses of the association and the conditions in regard to the payment of the same and in regard to the payment of assessments to cover the death claims and the reserve fund shall
152 be stated in the certificate issued to each member of the association.

ARTICLE X.

Benefits to Members.

SEC. 1. Upon the decease of any member the association shall, within ninety days after receiving satisfactory notice and proof of the same, pay to the beneficiary named on the books of the association, or to his or her assigns or legal representatives, as the case may be, the amount to which the same are entitled according to the terms of the certificate of membership held.

SEC. 2. From $100 to $500, at the discretion of the executive committee, may be paid immediately upon the approval of the proofs of death, to pay funeral expenses; the balance is due and payable in ninety days.

ARTICLE XI.

Security of Funds.

SEC. 1. Seventy-five per cent. of all the net death assessments received by the association shall go into the death fund, from which

losses shall be paid; the remaining 25 per cent. shall be carried to the reserve fund, no part of which shall be used for expenses.

SEC. 2. The net earnings of the association, together with the twenty-five per cent. of the net receipts from each assessment, shall constitute a reserve fund, which shall be deposited with a
153 trust company and be securely invested in United States bonds, mortgages, or other interest-bearing securities by said trust company, as trustee, for the exclusive benefit of the members of the association, as per the terms of the deed of trust between this association and said trust company, and the interest on the same as it accrues shall be placed by said trustee to the credit of the death fund, to be used in providing for the current death claims.

SEC. 3. The reserve fund above $100,000 and in excess of sums represented by outstanding bonds may be applied to the payment of claims in excess of the American Experience Table of Mortality, and when any claim by death is due to making up any deficiency that may then exist in the death fund.

SEC. 4. After the expiration of each period of five years during the continuance of a certificate of membership a bond shall be issued (bearing interest at the rate of 4 per cent. per annum, payable annually, to the death fund) for an equitable proportion of the reserve fund, and the principal of said bond shall be available ten years from its date towards paying future dues and assessments under said certificate, and should membership under said certificate cease from any cause said bond shall at once become null and void, and any portion of said principle not thus used shall be applied to increase the bonds issued at the next quinquennial apportionment to other members of the association holding certificates issued during the same year as the aforesaid certificate, and at which apportionment the rate of assessment may be changed to correspond with the
154 actual mortality experience of the association.

SEC. 5. On the first days of February, May, August, and November (or at such other periods as the boards of directors may determine) an assessment may be made upon the entire membership in force at the date of the last audited death claim prior thereto for such a sum as the executive committee may deem sufficient to meet the existing claims by death, the same to be apportioned among the members, according to the age of each member, as per the rates named in the certificates of membership, and the net amount received from such assessments (less twenty-five per cent., to be set apart for the reserve fund) shall go into the death fund. A member failing to receive a notice of an assessment on or before the first days of February, May, August, and November (or at such periods as may be named by the directors) shall work a forfeiture of membership in this association with all rights thereunder. The provisions of this amendment shall take effect on and after August 1st, 1883.

SEC. 6. If at any time any person secures membership in this association by concealing any material fact, or if the statements in his application for membership are in any respect untrue, the agent or solicitor securing the application shall be considered the agent of

the applicant and not the agent of the association, and all monies paid to such agent or solicitor shall be paid as to the representative of the applicant. This association shall be debited with and accountable for only the net cash received by it, or if any member
155 shall neglect to pay any dues or assessments when due, or if any of the conditions are violated upon which the certificate of membership is issued, then and in every such case such membership shall at once cease and determine and all payments made thereon shall be forfeited to the association, but the executive committtee shall have power to reinstate such delinquent member at any time within one year for good cause shown and upon satisfactory evidence of good health and upon payment of all delinquent dues and assessments.

SEC. 7. All investments of the association shall be in Government, State, county, or city securities, or on bond and mortgage on real estate.

SEC. 8. The board of directors shall have authority to adopt such other rules and regulations as they may deem for the interest of the association.

ARTICLE XII.

Amendments.

SEC. 1. This constitution may be revised or amended at any annual meeting of the association or at a special meeting of the members called for that purpose by a two-third vote of the members present, in person or by proxy, but no such amendments shall be considered unless the same shall have been submitted in writing to the executive committee at least thirty days previous to such annual or special meeting except by unanimous consent of the members present at such meeting.

156 *By-Laws.*

Application for membership.

1. Every application for membership must be in writing and must also contain a warranty that the applicant is physically a sound risk and entitled to membership. It must answer satisfactorily all the questions set forth in the form of application adopted by the executive committee.

2. Every application for membership should be accompanied by a remittance to cover the amount of admission fee.

3. The association will not be bound to recognize any claim unless such claim is made within six months after the date when it shall first accrue.

4. A notice addressed to a member at his post-office address, as appearing upon the books of the association, according to its usual course of business, shall be deemed a sufficient notice, and proof of mailing the same, according to the usual course of business of said association, shall be deemed sufficient proof of compliance on the part of said association.

5. A local board of trustees, composed of not less than ten leading citizens of each district who are members of the association, may be formed, who shall act as an advisory council, and a local treasurer may be appointed to receive dues and assessments in accordance with the rules and regulations of the association.

6. The admission fees for expenses shall be as follows:

	Upon each	$1,000	certificate	$8 00
	"	2,000	"	12 00
157	"	3,000	"	15 00
	"	5,000	"	20 00
	"	10,000	"	30 00

7. The annual dues for expenses shall be limited to $2.00 on each $1,000, payable annually in advance.

8. The basis of the assessment rate for each member, according to the age taken from the nearest birthday, on each $1,000 shall be as follows:

Age.	Rate.
15 to 25	$1 00
26	1 02
27	1 04
28	1 06
29	1 08
30	1 10
31	1 12
32	1 14
33	1 16
34	1 20
35	1 24
36	1 28
37	1 32
38	1 36
39	1 40
40	1 44
41	1 48
42	1 52
43	1 56
44	1 60
45	1 64
46	1 68
47	1 72
48	1 76
49	1 80
50	2 00
51	2 25
52	2 50
53	2 75
54	3 00
55	3 25
56	3 50

Age.	Rate.
57	3 75
58	4 00
59	4 25
60	4 50
61	5 00
62	5 50
63	6 00
64	6 50
65	7 00

158 9. All certificates of membership and contracts of the association shall be signed by the president (or, in case of his disability, by the vice-president) and secretary of the association or by the executive committee.

10. Regular meetings of the board of directors shall be held on the second Wednesday of the months of January, April, July, and October in each year, and special meetings may be called by the president at any time by personal notice to each of the directors or by written notice mailed not less than forty-eight hours before the meeting.

11. These by-laws may be amended at any quarterly meeting of the board of directors.

159 EXHIBIT K.

13544.

Reinstatement rejected 12, 24, '84. J. W. B.

MEDICAL DEPARTMENT, MUTUAL RESERVE FUND LIFE ASSOCIATION, BRYANT BUILDING, 55 LIBERTY STREET, NEW YORK.

Jas. W. Bowden, M. D., medical director:

1. Is there anything disproportionate in the weight, stature, or girth measurements? If yes, state if either parent or other of their children exhibit the same peculiarity, and which parent the applicant most resembles in physical appearance.

No.

2. (A) Are the respiratory murmur and percussion note clear, distinct, and of normal character over all parts of both lungs? (B) Number of respirations per minute. (C) Does physical examination reveal anything whatever abnormal in the condition of the respiratory organs?

A, Yes; B, 18; C, no.

3. (A) Is the character of the heart's action uniform, free, and steady? (B) Give the rate of the pulse. If the pulse-rate be above 88 or below 54, re-examine on another day. (C) Does it intermit or become irregular or unequal? (D) Does ausculation or percussion indicate enlargement or any other disease of the heart, its valves or appendages?

A, Yes; B, 83; C, No; D, No.

160 4. Are there evidences of disease of the liver, spleen, or other abdominal organs?

Right inguisiol hernia.

5. Examination of the urine is required in all risks of $3,000 or more, in all risks in which symptoms have existed at any time of bladder or renal diseases, and in all cases of reinstatement.

Sp. gr., 1016; Albumen, No; Reaction acid; Sugar, No.

6. Do you professionally consider the risk safely assurable; if so, for what amount? If you have any hesitation in answering unqualifiedly yes, give the association the benefit of the doubt and answer no, writing a confidential letter to the medical director at the home office.

The man is insane.

I certify that I have this day made a personal examination, in private, of the above-named person; that the foregoing answers are in my own handwriting, and that my fee for same is paid.

A. M. SHEW, *M. D.*

Examined at Middletown this 20th day of Dec., 1884.

Where and when graduated: Jeff. Med. Col., Phila., M'ch, 1864.

Applicant's Declaration.

It is hereby declared and warranted that my answers to the above questions put by the medical examiner are full, complete, correct, and true, and that the same shall be made a part of the contract of my certificate of reinstatement in the Mutual Reserve Fund Life Association, and that I am the person who was examined as above.

H. H. HAMLIN, *Applicant.*

Witness:

JAMES OLMSTEAD, *M. D.*

161 LUCAS & JENNINGS, ATTORNEYS AND COUNSELLORS AT LAW, OFFICE 31 SHETUCKET STREET,

NORWICH, CONN., *Dec.* 23, 1884.

GENTLEMEN: I enclose you herewith the medical examination of H. H. Hamlin. No. of certificate, 13544.

Please let me hear from you relative to it, and very much oblige,

Yours truly, SOLOMON LUCAS,

Mutual Reserve Fund Life Association, Bryant Building,
55 Liberty Street, New York City, N. Y.

And thereafter judgment for the plaintiff was entered as follows:

Whereupon it is considered and adjudged by the court here this 10th day of August, A. D. 1887, that the issue is for the plaintiff, and that the plaintiff do recover of the defendant the sum of eleven thousand one hundred and forty-three — and twenty-two cents ($11,143.22), and have execution therefor.

162 United States Supreme Court.

MUTUAL RESERVE FUND LIFE ASSOCIATION, Plaintiff in Error,
against
SARAH C. HAMLIN, Defendant in Error.

STATE OF NEW YORK,
City and County of New York, } ss:

George W. Sanders, being duly sworn, says that he is a clerk in the office of Taylor & Parker, attorneys for the plaintiff in error in the above-entitled action, and of the age of twenty-one years and upwards; that on the 5th day of October, 1887, he served a copy of the annexed assignment of errors on Solomon Lucas, attorney for the above-named defendant in error, by depositing the same in the post office at New York city, the place of residence of Alfred Taylor, one of the attorneys for the plaintiff in error, enclosed in an envelope addressed to said Solomon Lucas, the attorney for the defendant in error, at Norwich, Connecticut, his place of residence; that at the time of mailing said paper he paid the full legal postage thereon, and that there is a regular mail communication between said New York, N. Y., and Norwich, Connecticut.

GEO. W. SANDERS.

Sworn to before me this 5th day of October, 1887.

WM. BARKER,
Notary Public, N. Y. Co.

163 United States Supreme Court.

MUTUAL RESERVE FUND LIFE ASSOCIATION, Plaintiff in Error,
vs.
SARAH C. HAMLIN, Defendant in Error.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the said court, at the Capitol in Washington, comes the said plaintiff in error, by Taylor & Parker, its attorneys, and says that in the records and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given was given for the said defendant in error, against the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff, against the said defendant.

2. That the judge erred in not directing a verdict for the defendant.

3. That there was error in refusing to direct a verdict for the defendant.

4. The plaintiff in error assigns for error the several rulings, instructions, and refusals to instruct which were by it made on ground of exceptions upon the trial, as by the bill of exceptions in this record appears.

And the said plaintiff prays that the judgment aforesaid, for the error aforesaid and other errors in the record and proceedings afore-

said, may be reversed, annulled, and altogether held for nothing, and that it, the said plaintiff, may be restored to all things which it has lost by occasion of said judgment, etc., etc.

TAYLOR & PARKER,
Attorneys for Plaintiff in Error, 38 *Park Row, New York City.*

164 [Endorsed:] U. S. Supreme Court. Mutual Reserve Fund Life Association, plaintiff in error, against Sarah C. Hamlin, defendant in error. Assignment of errors. Taylor & Parker, attorneys for plaintiff in error, 38 Park Row, New York city.

Endorsed on cover: Connecticut C. C. U. S. No. 184. The Mutual Reserve Fund Life Association, plaintiff in error, *vs.* Sarah C. Hamlin. Filed October 12, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM.

MUTUAL RESERVE FUND LIFE ASSOCIATION, Plaintiff in Error,
against
SARAH C. HAMLIN, Defendant in Error. } 184.

It is hereby stipulated and consented that the return herein from the circuit court of the United States for the district of Connecticut and the printed transcript herein be corrected and amended as follows:

That in page 40, paragraph XV of the answer, line 2, the word "ten" is to be changed to "sixteen."

On page 41, paragraph XVI of the answer, strike out the words "of ten dollars."

On page 42, paragraph XVII of the answer, insert the word "first" before the word "week," on the first line, and strike out the words "of ten dollars," on the third line.

On page 42, paragraph XVIII of the answer, strike out the words "of ten dollars," in the third line.

On page 43, tenth line, strike out the word "years" and insert "days."

At page 154, section 5, line 3, change the word "may" to "shall."

On page 154, section 5, after the word November, line 12, insert "for his share of the losses occurring during the time specified, it shall be his duty to notify the home office in writing of such fact.

"A failure to pay the assessment within thirty days from the first days of February, May, August, and November."

CHAS. E. PERKINS,
Attorney for Sarah C. Hamlin, Defendant in Error.
TAYLOR & PARKER,
Attorneys Plaintiff in Error.
ALFRED TAYLOR,
FREDERICK S. PARKER,
Of Counsel for Plaintiff in Error.

[Endorsed:] Sup. Court U. S. 1890, Oct. term. No. 184. The Mutual Reserve Fund Life Association, pl'ff in error, *vs.* Sarah C. Hamlin. Stipulation to correct record.

[Stamped:] Office Supreme Court U. S. Filed Dec. 13, 1890. James H. McKenney, clerk.

Office Supreme Court U. S.
FILED,
JAN 12 1891
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 184.

MUTUAL RESERVE FUND LIFE ASSOCIATION,

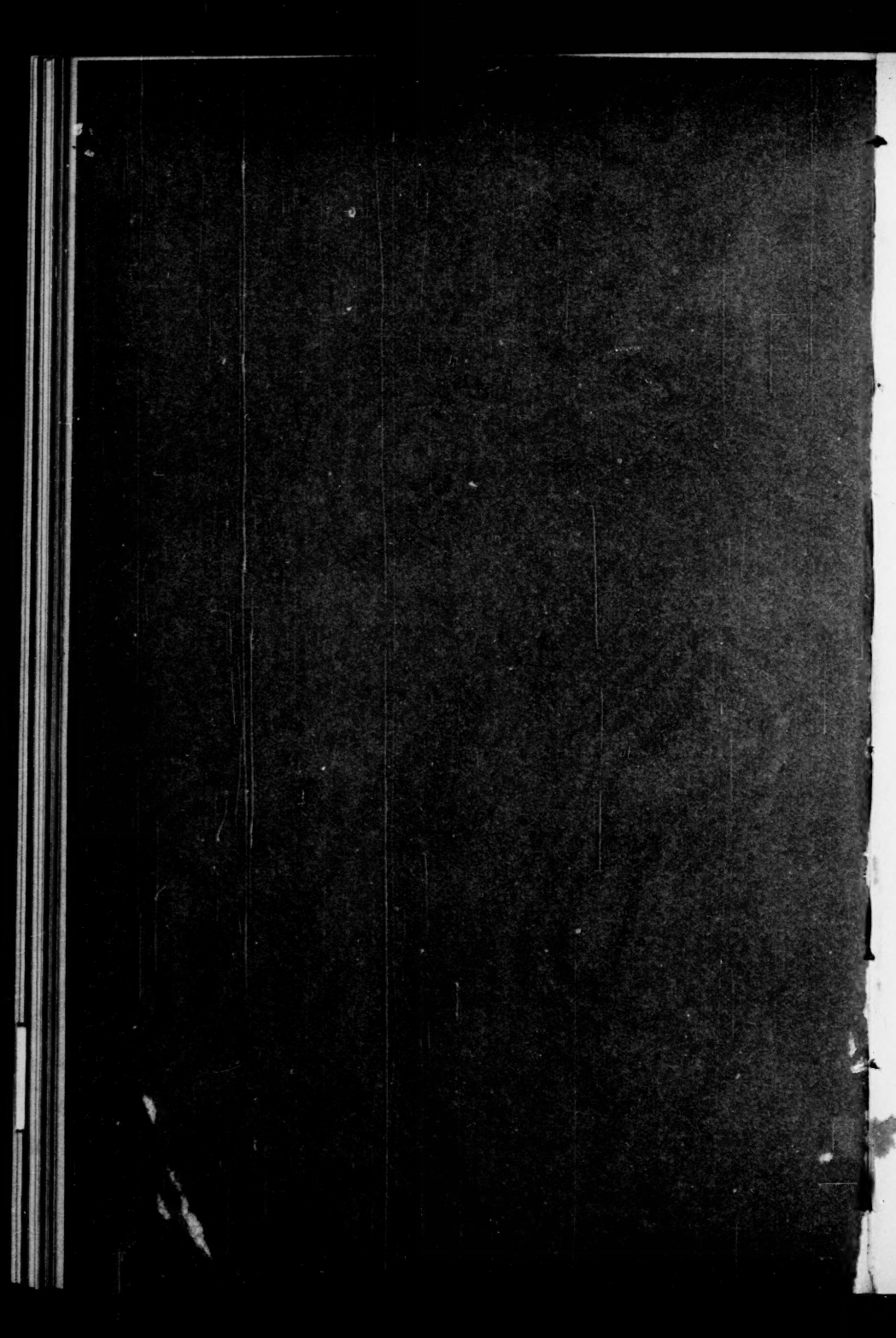
Plaintiff in Error,

against

SARAH C. HAMLIN.

BRIEF FOR PLAINTIFF IN ERROR.

ALFRED TAYLOR,
FREDERICK S. PARKER,
Counsel for Plaintiff in Error,
15 WALL STREET,
New York City.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

MUTUAL RESERVE FUND LIFE ASSOCIATION, Plaintiff in Error, *vs.* SARAH C. HAMLIN.	No. 184.

BRIEF FOR PLAINTIFF IN ERROR.

Statement of the Case.

This cause comes up by writ of error to the Circuit Court of the United States for the District of Connecticut, to review a judgment entered in favor of plaintiff below, upon verdict of a jury, for the sum of $11,143.22. Judgment rendered August 10, 1887 (Record, p. 74, fol. 161).

The action was originally commenced in the Superior Court of the State of Connecticut, in and for the county of New London, and on petition of plaintiff in error, was removed to the Circuit

Court of the United States for the District of Connecticut (Record, pp. 5–12).

The complaint (65) alleges that on July 2, 1883, the defendant below—Mutual Reserve Life Fund Association—was a corporation under the laws of New York, received Henry H. Hamlin as a member of the defendant association, and issued to him a certificate of such membership—Exhibit A (Record, pp. 7–9)—whereby upon his death $10,000 became, by the terms of such membership, payable to plaintiff, his wife; and, by Paragraph 7: *That Henry Hamlin duly fulfilled all the conditions stated in said instrument on his part to be performed.*

And by

Paragraph 8: That plaintiff *duly fulfilled* all the duties on her part required by her to be performed by said instrument, and made due proof of death as required by said instrument, and that death occurred February 17, 1885; and claimed damages $12,000.

Complaint, Record, pp. 6–9.

The answer admits incorporation under Chapter 267, Laws 1875, and Chapter 175, Laws of 1883, of the State of New York, and that defendant receives members, whereby, as in their certificates, and as provided in its by-laws, certain benefits accrued to its beneficiaries, and not otherwise. Also admits the issuing of the certificate, and denies specifically paragraph 7, that Henry H. Hamlin duly fulfilled all the conditions stated in said instrument on his part to be performed; also denies specifically paragraph 8.

That plaintiff duly fulfilled all the duties on her part required to be performed by said instrument, and made due proof of death, according to the requirements of said instrument, and alleges that there was a failure to pay the premiums on the certificate or policy, called mortuary assessments, after April, 1884, to wit, the assessments payable within thirty days from the first week days of June and August, 1884, and that prior to the death on February 17, 1885, to wit, on July 2, 1884, thirty days after June 2d (first week day), 1884, the rights of membership ceased, and the policy or certificate became null and void.

The answer, paragraph 22, alleges:

"*That after July 2, 1884*, and *prior to the death* "*of said Henry H. Hamlin, the said Henry H.* "*Hamlin*, by or through the plaintiff, his or her at- "torney, *and the plaintiff* and her attorney, some "one or all of them *applied to the defendant* asso- "sociation, by and through its officers and execu- "tive committee, *to reinstate the aforesaid certifi-* "*cate, and to reinstate said Henry H. Hamlin as* "*a member of the defendant association, which* "*said application was denied and refused.*"

And the complaint further alleges that thereafter on February 17, 1885, said Henry H. Hamlin being then no more a member of defendant association, died.

Answer, Record, p. 12–18.

Replication was filed July 17, 1887.

First.—Plaintiff has no knowledge or information relative to any mortuary assessment made on the first day of June sufficient to form a belief.

Second.—That at that time Hamlin was, and until his death, remained insane.

Third.—That no notice was mailed or sent Henry H. Hamlin of such assessment.

Fourth.—That defendant knew Hamlin was insane.

Fifth.—That no notice was received of such assessment by the plaintiff or by said Hamlin.

Like denials or allegations were made as to the August, October and December assessments.

That on December 6th, 1884, plaintiff tendered the June and August assessments, which defendant refused, and avers readiness to pay the same.

Paragraph XXII of the answer is admitted.

(Replication, Record, p. 18-20).

Demurer was interposed (Record, p. 20), and motion to expunge.

(Record, p. 21).

The demurer as to the second, fourth and fifth above set forth parts of replication, was sustained, to wit, the alleged insanity of Hamlin and defendant's knowledge thereof, and non-receipt of notice of assessment by plaintiff and Hamlin. The demurer was overruled as to clause 3, which alleges that no notice was mailed or sent plaintiff or said Hamlin.

(Record, p. 22).

On the issues presented "*that Henry H. Hamlin*

duly fulfilled all the conditions on his part to be performed," which the defendant *denied*, the case came to trial in the Circuit Court before Hon. N. Shipman, Judge, and jury at New Haven, Connecticut, April, 1887.

Assignment of Errors.

The plaintiff in error assigns as error the following:

I.—The Court below erred at the close of the plaintiff's case, in refusing to dismiss the complaint as prayed by the counsel for the plaintiff in error, on the grounds:

(1.) For want of proof on the part of the plaintiff.

(2.) Upon the ground, specifically, that payment of assessments since assessment of April 1, 1884, is not shown.

(3.) Upon the ground that it is admitted in the proofs of death furnished by defendant in error that some payments were not made.

(4.) On the ground that paragraph 22 of the answer is admitted by the replication. Paragraph 22 alleges that after July 2, 1884, and prior to death the insured applied to plaintiff in error for reinstatement which was refused. The Court erred in refusing to dismiss the complaint, and in putting the

defendant to its proof and to trial on the evidence submitted by plaintiff. (Record, p. 26).

II.—The Court below erred at the close of the whole case in refusing the motion of the plaintiff in error to dismiss the complaint and to direct a verdict in its favor, on the grounds severally, as made at the close of plaintiff's case. (Record, pp. 40 and 41).

III.—The Court below erred in refusing to direct a verdict for the defendant on the ground:

First.—That there was no issue of fact in the case for the consideration of the jury.

Second.—On the ground that there was failure to pay assessment 14 made June 2, 1884, within thirty days from that date.

Third.—On the ground that there was failure to pay said assessment 14 within thirty days from the mailing of notice of said assessment according to the usual course of business of plaintiff in error.

Fourth.—On the ground that there was failure to pay assessment 15, made August 1st, 1884, within thirty days from that date. (Record, page 40).

IV.—The Court below erred in denying the motion of counsel for plaintiff in error to strike out all the evidence showing or claiming to show non-receipt of notice of assessment upon the grounds:

First.—That the non-receipt is no defense.

Second.—It does not prove that it was not mailed.

Third.—It is not evidence on which the jury may find it was not mailed. (Record, page 40).

V.—The Court below erred in denying the motion of counsel for plaintiff in error to direct a verdict for the plaintiff in error, on the ground that the defendant in error did not dispute notice of assessment number 11, December 18th, 1883, was mailed to and received by her, in which it was stated that assessments would be made bi-monthly on the first week days of October, December, February, April, June and August and which said notice was contained in the preceding and subsequent assessment notices, which said defendant in error did not deny was mailed and also received. (Record, pages 40 and 41).

VI.—The Court below erred in denying the motion of counsel for plaintiff in error to direct a verdict in its favor on the ground that by the terms of the constitution and by-laws as modified by resolution of Board of Directors of failure to pay mortuary assessments within thirty days from the first week days of June, August, October, December, February and April of each year renders the policy void, whether assessment notice was in fact mailed or not.

VII.—The Court below erred in denying the

motion of counsel for plaintiff in error to direct a verdict in its favor on the ground that by the terms of its constitution and by-laws a failure to pay mortuary assessments within thirty days from the first week days of August, November, February, May of each year forfeits membership, whether notice of assessment was in fact mailed or not.

VIII.—The Court below erred in denying the motion of counsel for plaintiff in error to direct a verdict in its favor upon the proofs (Record, p. 41).

IX.—The Court below erred in admitting the testimony of the witness, Caruthers, as to the transaction in the Norwich Post Office on the ground that such evidence was immaterial, irrelevant and incompetent on the question whether notice was mailed in the New York Post Office on June 2d, 1884, and on the ground that payment was required to be made within thirty days from the first week day of June, 1884, whether notice was in fact mailed or not (Record, p. 36).

X.—The Court below erred in admitting the testimony of the defendant in error that she did not receive the notice (Record, pp. 37 and 38), and erred in admitting the testimony (pages 37, 38, 39 and 40 of the Record) by the plaintiff below, and by her children and servant that they did not receive the assessment notice of June, 1884.

XI —The Court below erred in admitting the testimony of the plaintiff below as to when she first

received notice of the June assessment (Record, p. 38).

XII.—The Court below erred in admitting testimony of the offer to pay premiums in September and October, 1884 (Record, pp. 39 and 40).

XIII.—The Court below erred in the charge to the jury as set forth in the exceptions of the plaintiff in error in record page 43, folio 102.

XIV.—The Court below erred in refusing to charge the jury as requested by the counsel for the plaintiff in error (pages 44 and 45 of the record).

XV.—The Court below erred in refusing to charge the jury that defendant is an association for the purpose of mutual insurance and protection; that its members are members of a mutual association, and as such they are bound by its constitution and by-laws and also in refusing to submit to the jury said constitution and by-laws the various provisions thereof and the duties imposed thereby on Henry H. Hamlin.

XVI.—To the charge of the Court:

"Under the policy it was incumbent on the "insurance company to mail a notice of a mor- "tuary assessment directed to the member "at the post office address which appeared "upon the books of the association. It is a pre- "requisite to the forfeiture of the policy to show "that the notice was mailed according to the usual "course of business. Upon the question of mail-

"ing notice of the June assessment depends the "question of forfeiture. Upon this point the de- "fendant takes the burden of proof.

XVII.—To the charge of the Court:

"There are however two additional facts, one "that the letter contained a return notice and that "the letter was never returned, which tends to "show two things, one that it was not by mistake "directed to the wrong town, because if it had "been it would probably have found its way back, "and therefore tends to diminish the idea that the "letter might have been lost or mislaid in the mails "or have been sent to the wrong place."

XVIII.—To the charge of the Court:

"This question of fact is the great question of "fact in the case, was the notice of the assessment "of June sent or mailed to the address as appears "in the books either in June or July. If it was "not mailed as claimed by the defendant, and if "within thirty days from the time that the notice "of such assessment, payment or tender of pay- "ment to the defendant was made by the plaintiff, "then there was no forfeiture. If no notice was "given to the plaintiff of the June assessment, "until the first of September, the uncontradicted "testimony of Mr. Canovan is to the effect that "there was on September 6th a valid tender of the "two overdue assessments."

POINTS.

First Point.—THE PLAINTIFF IN ERROR AT THE CLOSE OF THE CASE MADE OUT BY THE DEFENDANT IN ERROR WAS ENTITLED TO A DISMISSAL OF THE ACTION; THERE WAS NOT SUFFICIENT TO PUT IT TO ITS PROOF OR ON TRIAL, AND THE COURT BELOW ERRED IN DENYING THE MOTION TO DISMISS THE COMPLAINT.

Counsel for plaintiff in error moved to dismiss the complaint on four grounds, and duly and severally excepted to the denial (Record, p. 26):

First.—For the want of proof.

Second.—Payment of assessments since April 1, 1884, was not shown.

Third.—Proofs of death in evidence admitted some payments were not made.

Fourth.—For that paragraph 22 of the answer was admitted in the replication.

Punctuality in the payment of premiums in the case of a life insurance policy is of the very essence of the contract.

Holly *vs.* Metropolitan Life, 105 N. Y., 437.

The time of payment is material and of the essence of the contract; and a failure to pay involves an absolute forfeiture.

N. Y. Life Ins. Co. *vs.* Statham, 93 U. S., p. 24.

Payment of premiums on a life insurance policy, or as in this case the equivalent—the mortuary assessments—is a prerequisite essential to recovery.

The burden of proof was on defendant in error to prove payment. The burden was on her to prove compliance with such conditions, or a sufficient excuse for non-compliance.

> Eaton *vs.* Supreme Lodge Knights of Honor, U. S. Circuit Court, Ohio, 15 Ins. *Law Journal*, 762.

The complaint alleged in paragraph VII (Record, p. 6): "*Henry H. Hamlin duly fulfilled all the conditions.*" *This was denied in the answer.*

There is no proof of payment or valid excuse for non-payment proven.

The case stood thus:

Defendant in error put in evidence the certificate of membership and the formal notice of or proofs of death.

Plaintiff in error *admitted* "that *all payments* required were made *except* payment of mortuary assessments *after* April 1, 1884 (Rec., p. 19). Defendant in error then proved payment of assessments 12 and 13, being those of February and April, 1884, and made no further proof of any payments prior to February or after April, or of fact of death, both of which were essential parts of case of defendant in error.

Defendant in error having accepted such admission is bound by the qualification "except."

The form of admission implies certain required payments were omitted. The defendant in error without the admission would have been put to proof of various payments from and after issuing of policy. This was avoided as to part by the admission, but such admission cannot be construed to include anything beyond its strict terms, in fact it by implication avers other payments became payable and were unpaid. No proof of payment or excuse for non-payment was offered as to any assessments or payments since April 1, 1884 up to date of death February 17, 1885.

But the *case as made out by defendant in error*, also showed *affirmatively*, there were payments—mortuary assessments—unpaid.

Proofs of death formed part of the case of defendant in error and were put in evidence by her (Record, 25, Ex. 2, p. 51-62).

Paragraph 8 of complaint alleged, "plaintiff duly fulfilled all the duties on her part to be required by her to be performed by said instrument, and made *due proof of death according to the requirements of said instrument.*"

The instrument (policy), p. 46, provides for payment "within ninety days after receipt of satisfac-
" tory evidence to the association of the *death of*
" *the above named member during the continuance*
" *of this certificate of membership*, there shall,
" &c."

Proof of death, and that it occurred during continuance of certificate, was the proof required as a condition precedent to recovery.

"The preliminary proofs presented to an insur-

"ance company in compliance with the conditions
"of its policy of insurance, are admissible as *prima*
"*facie* evidence of the facts stated therein *against*
"*the insured* and on behalf of the company."

Ins. Co. *vs*, Newton, 22 Wallace, 32.

Part of those proofs of death was claimant's oath: It proves death, place, date, and capacity to claim, relationship and other items, and then follows: Question.—Were any payments, dues or mortuary assessments under said certificate unpaid at time of death of said deceased? Answer.—They were; but the same were not paid, because the company would not receive them (Record, p. 54).

Affirmatively it now appears by the evidence of defendant in error that certain payments were unpaid—but claims excuse—"company would not receive them." Burden of proof was on her then to show premiums were offered and validly offered—or valid excuse for not offering. Without it there is no legal excuse shown justifying recovery when payments were unpaid. No evidence even was given "company would not receive them."

It is well settled that while admissions can be used, and are evidence against the parties making them, they cannot be used or made evidence in their favor. Only such *declarations as are against interest* are admissible or available. The statement in the proofs as to non payment of dues and assessment is evidence therefore *only* of the fact there were unpaid dues and assessments. The declaration that "Company would not receive them" is not available to defendant in error as evidence. The

entry in the proofs, that there were unpaid dues or mortuary assessments, is an entry it was her duty to make—was made in the course of her duty, under the requirements of the policy contract. Anything beyond that is not available.

Percival *vs.* Nanson, 7 Eng. Law. & Eq. R., p. 538.

Of that fact it was incumbent on her to present legal proof, if she desired to avail herself of it. No proof was offered.

But, even assuming for the sake of argument, that the statement "company would not recover them," can be taken into consideration as evidence, it is insufficient to relieve the admission of its effects as an admission of non-payment. The words in question admit specifically non-payment, and claimed excuse for the same. They must therefore set forth such facts as would in law constitute a valid legal excuse for non-payment. This they utterly fail to do. The mere fact that the company would not receive payment without stating when such payment was offered, or even that any legal offer at all was made, is wholly insufficient to avoid effect of non-payment, and if offered in evidence at trial, that mere fact would be clearly held insufficient to establish a legal excuse—for aught that appears company had a perfect legal right to refuse payment—as *e.g.*, if company refused to receive payment long after policy had become forfeited.

Under this proof the burden was upon the defendant in error to produce the testimony to relieve

her of the legal effect of non-payment, by proving facts constituting a valid excuse for non-payment, and in the absence thereof, plaintiff in error was entitled to a dismissal of the complaint.

The answer, paragraph XXII, alleges that after July 2, 1884, and prior to the death of Hamlin, the said Hamlin and the defendant in error and her attorney applied to the plaintiff in error "to reinstate the certificate and to reinstate said Henry H. Hamlim as a member of the association, and which application was denied and refused."

The replication (Record, p. 20) admits this.

At the close of the plaintiff's case, therefore, it appeared by the pleadings that Henry H. Hamlin, prior to death, applied for reinstatement and in that application defendant in error joined, which application was refused.

This admission confirms the proof of death, that Hamlin had ceased to be a member, for in his lifetime he applied for reinstatement and plaintiff joined in it, and the company denied it.

Certainly the proof showed plaintiff to be in default of payment. There are no facts proved establishing valid excuse for non-payment—nor is there even any allegation in the complaint averring an excuse for non-payment.

The pleadings confirm the proof—the defendant in error admits in her replication that Henry H. Hamlin, and she herself, prior to his death, applied for reinstatement, which company refused.

The motion of plaintiff in error, therefore, to dismiss the complaint should have been granted and the Court erred in its refusal.

Second Point.—THE CONSTITUTION AND BY-LAWS ARE A PART OF THE CONTRACT, AND THE COURT ERRED IN OVERRULING THE OBJECTION OF COUNSEL FOR PLAINTIFF IN ERROR TO THE ADMISSION OF THE CERTIFICATE WITHOUT SUCH CONSTITUTION AND BY-LAWS.

The certificate provides :

(Record, page 47, fol. 109). "This certificate is "not binding * * * and shall be subject to all "the provisions and stipulations contained in the "Constitution and By-Laws of this Association."

The Constitution and By-Laws were a part of the policy contract. It is error to introduce a part of a contract against objection, and the defendant in error having failed to introduce the remaining part of contract, plaintiff in error was entitled to a dismissal of the complaint.

Larue *vs.* Rowland, 7 Barb., 107.
American Underwriters' Assen. *vs.* George, 97 Pa. State, 238.
Lycoming F. Ins. Co. *vs.* Starrs, 97 Pa. State, 361.

A portion of a writing cannot be received as evidence while a part is withheld.

Third Point.—THE DEFENDANT IN ERROR HAVING FAILED TO PROVE THE FACTS ESSENTIAL TO RECOVERY, THE PLAINTIFF IN ERROR WAS ENTITLED TO DISMISSAL OF ACTION. IT WAS ERROR TO PUT IT TO ITS PROOF, AND THROW UPON IT THE BURDEN OF SHOWING AFFIRMATIVELY THAT DEFENDANT IN ERROR HAD NO VALID EXCUSE FOR NON-PAYMENT.

The motion at page 26 of the record should have been granted and the exceptions of the plaintiff in error to the denial of each of said motions severally by the Court below was error requiring reversal of the judgment.

Dwight *vs.* Germania L. I. Co., 103 N. Y., 341.

Improvement Co. *vs.* Munson, 14 Wallace, 442. Clifford, J., p. 448.

Fourth Point.—ACTUAL NOTICE TO MEMBER IS NOT REQUIRED.

The contract does not impose such duty on the association. If the language was "after notice to defendant" or "notified" then the common law rule requiring proof of actual notice or receipt of notice would apply.

The whole tenor of the policy contract is careful to avoid this. It is impossible for an association

like this then—over ten thousand in number, now many times more—to carry on business in such manner.

The policy contract provides: In consideration of * * * and "all mortuary assessments to be paid as per table endorsed hereon, at the principal office of the association in the city of New York, within thirty days from the date of each notice." (Record, p. 46, fol. 107.) And it then provides, "A notice addressed to a member at his post office address as appearing upon the books of the Association, according to its usual course of business, shall be deemed a sufficient notice and proof of mailing the same according to the usual course of business of said association, shall constitute and be deemed and held sufficient proof of compliance herewith on the part of said association." (Record p. 47, fol. 110.) And further, the policy contract provides, "This certificate is issued and accepted subject to the express condition that if any of the payments above stipulated shall not be paid when due at the office of the association in the city of New York * * * then this certificate shall be null and void." (Record, 47-8.)

"Notice" does not mean "knowledge" or "information." It will be seen that the clause in the policy in regard to mailing uses the word "notice" in two senses: one in the sense of the *paper writing*, and the other in the sense of "knowledge or conveying knowledge." This is apparent: "A notice (meaning a printed or written paper) addressed to a member shall be deemed a sufficient notice" (meaning information.)

The language "All assessments payable within thirty days from the date of each notice" means from the date of the printed notice—not from the information to the policy holder. The Association has no duty to see that he actually receives notice. That is impossible in the transaction of the vast business of the plaintiff in error.

Fifth Point.—ACTUAL NOTICE WAS, IN FACT, RECEIVED, AND THE EVIDENCE OF SUCH RECEIPT IS UNDISPUTED.

The defendant in error testified (Record, p. 38): "The April assessment was the last one I received. I received the previous notice of assessment. I began to pay them in the fall of 1883, and I paid them every two months to April, 1884.."

Among these notices admitted to have been received was assessment notice No. 11. That notice contained *inter alia*: "The directors have determined * * * to make the assessments bi-monthly, to wit, on the first week days of October, December, February, April, June and August" (Record, p. 34).

This was part of that assessment notice; also of all prior and subsequent notices (Record, p. 34). Receipt of all these is admitted as above shown. Notice is thus given that assessments will be required to be paid at above periods.

But also other and further notice was admitted

to have been received, and this in the notice of April, 1884.

Assessment 13 was made April 1, 1884. On p. 26 of Record defendant in error testifies she received this notice. At page 64 of record the notice itself is set forth in full. This assessment was paid (Record, p. 26), and over her own signature defendant in error is statement of amount remitted, and she also states the notices are addressed correctly (Record, p. 65).

In that notice it is stated: "*Members at a distance, by remitting one advance assessment, will have no further calls for four months. By remitting two advance assessments no further call will be made for six months.*"

Notice was thus given, and actually received, that the payment of that April assessment No. 13, the last one, in fact, paid, carried the policy two months; one advance assessment in addition would carry it four months, or to August 1st; two advance assessments would carry it six months, or to October 1st.

No such advance payments were made or offered.

Defendant in error admits (Record, p. 39) she paid no attention to it until early in September, and then wrote the company the latter part of September.

All this is undisputed.

The Court below erred in denying motion of counsel for defendant in error at p. 40–41 of Record, to direct a verdict for defendant on the ground there was no dispute of this testimony.

The Court also erred in refusal to direct a general verdict for defendant upon the proofs.

(See request and exception Record, p. 41).

There being no disputed question of fact that these notices in two separate forms were duly mailed and received, it became a question of law, and there was nothing to submit to the jury ; and the Court below erred in denying the request of counsel for plaintiff in error (Record, p. 40), to direct a verdict for defendant on the ground that there is no issue of fact in the case for the consideration of the jury.

Undisputed questions of fact raise questions of law for the Court only to decide.

Sickles *vs.* Flanagan, 79 N. Y., 224.
Dwight *vs.* Germania Life Ins. Co., 103 N. Y., 341.
Improvement Co. *vs.* Wallace, *supra.*

Sixth Point.—THE CERTIFICATE OF MEMBERSHIP OR POLICY CONTRACT PROVIDES ONLY FOR MAILING "ACCORDING TO USUAL COURSE OF BUSINESS." IT PROVIDES: "PROOF OF MAILING ACCORDING TO THE USUAL COURSE OF BUSINESS OF SAID ASSOCIATION SHALL CONSTITUTE AND BE DEEMED AND HELD SUFFICIENT PROOF."

The Court charged the jury as follows:

"Under the policy it was incumbent upon the

insurance company to mail notice of a mortuary assessment directed to the member at the post office address which appeared upon the books of the association." Due exception is taken to this charge on p. 43 of the Record. Also, the Court charged: "Upon the question of mailing notice of June assessment depends the question of forfeiture." (Record, 42). Due exception was taken. (Record, p. 43).

The Court by this charge imposed on plaintiff in error the burden of proving *actual* mailing. Nowhere in the contract can this be found. The company carefully avoided this. No officer or employee can identify every notice among thousands. "*According* to usual course of business," was meant to limit and qualify—to avoid being placed in the position in which charge of Court placed plaintiff in error. Charge of fraud or failure to mail the general notice to members—departure from usual course of business, would avail defendant in error if proven; but not attempt to raise the issue that possibly by accident this particular notice may have been left out without intention or design.

Seventh Point.—THE PROOF OF MAILING ON MAY 31, 1884, "ACCORDING TO THE USUAL COURSE OF BUSINESS," TO THE POST OFFICE ADDRESS APPEARING ON THE BOOKS OF THE ASSOCIATION IS UNCONTRADICTED, AND THE COURT ERRED (P. 45, RECORD) IN REFUSING TO CHARGE AS REQUESTED BY COUNSEL FOR PLAINTIFF IN ERROR IN THE TWELFTH REQUEST THAT PROOF OF SUCH MAILING WAS UNCONTRADICTED, AND THE THIRTEENTH REQUEST THAT PAYMENT NOT HAVING BEEN MADE WITHIN THIRTY DAYS FROM JUNE 2, 1884, THE VERDICT MUST BE FOR DEFENDANT.

The evidence on this point was by the witnesses K. V. C. Jones and Vice-President George F. Potter —Record, p. 28 to 33.

K. V. C. Jones, In charge of assessment department since January, 1883. Policy register containing policy in question shown witness. She testifies. Notice of assessment fourteen, dated June 2, 1884, was mailed to Henry H. Hamlin at his post office address on the books. This notice was deposited in a regular U. S. mail bag from P. O. department, all done according to usual course of business. Usual course is as follows: All envelopes are directed, afterwards slips are compared with the addresses. The notices are placed in the envelopes which have also been compared with the addresses on the books, sealed stamped and placed in the mail bag. This notice was followed in regard to assessment fourteen and was pursued in reference to notice to Henry H. Hamlin. I saw that notice put in one of these U. S. mail bags. Before that notice was deposited, notice

and address on envelope were called back, compared with address on books; address on envelope corresponded with address on books. "I know that this assessment notice to Henry H. Hamlin went into the bag. The book shows that the assessment notice was sent.

Record, pp. 28 and 29.

George F. Potter, 2d Vice President, testifies: Assessment notices and envelopes are compared with the books. When so compared they were enclosed in the proper envelopes, sealed, stamped and dropped into mail bag; mail bag was then closed up and taken to the post office, all under my care and supervision. This course has prevailed ever since I took charge of the business, early in 1883, and this course was followed as to No. 14 assessment. I saw the assessment notices of No. 14 in these post office bags. I went with all of them to the post office in the evening of Saturday, May 31, 1884.

A *fac simile* of assessment notice 14 sent to all members and *fac simile* of the notices sent to Hamlin (leaving out name, amount and number), is Defendant's Exhibit B, on p. 65 of Record.

I am able to state specially that this particular notice 14 was sent to Henry H. Hamlin, because it so appears on the books and I saw it mailed. It so appears in the books by the extension.

(Testimony of Potter, Record, pp. 31–32.)

All this is uncontradicted. No fraud, deception,

intention purpose or intentional omission is claimed or charged.

The cross-examination was simply an attempt to show that witnesses could not of their own knowledge, with absolute and positive certainty, unaided by the books, state that a clerical error could not have by some remote possibility occurred.

Defendant in error does not produce any evidence showing or tending to show any error or facts in the remotest possible degree indicating error in the books or in the acts of the defendant or any of its officers.

The only evidence on the part of the plaintiff in error is that she did not get it.

Plaintiff in error at p. 40 of the record moved to strike out evidence of non-receipt as constituting evidence in opposition to or as evidence of untruth of testimony of Jones and Potter, and the records in defendant's books on the grounds :

1st. Non receipt was not a defence ; 2d. It did not prove it was not mailed ; and 3d. Was not evidence on which jury could find it was not mailed.

A stipulation making it a condition precedent that insured will pay an assessment within thirty days after he has been notified by written notice deposited in post office is valid and will be enforced, and proof that insured never received the notice does not relieve from the consequences of the non-payment.

Epstein *vs.* Mutual Aid Ass'n., 28 La. Ann, 938.

The motion was properly made and should have

been granted, and refusal to grant it was material error, and exception of plaintiff in error was well taken (Record, p. 40).

Eighth Point.—THE MOTION TO DIRECT A VERDICT FOR PLAINTIFF IN ERROR AT CLOSE OF WHOLE CASE SHOULD HAVE BEEN GRANTED. AT MOST THE LEARNED TRIAL JUDGE SUBMITTED IT ON A MERE SCINTILLA OF EVIDENCE AND IN VIOLATION OF A MORE RECENT AND WELL ESTABLISHED RULE—NOT WHETHER THERE IS LITERALLY NO EVIDENCE BUT WHETHER THERE IS ANY UPON WHICH A JURY CAN PROPERLY PROCEED TO FIND A VERDICT.

Counsel for plaintiff in error at close of case moved to direct a verdict on the same ground severally as made at close of case of defendant in error and also that there were no issues of fact for consideration of jury, Rec., p. 40, and also to direct a general verdict on the proofs (Rec., p. 41).

Due exception was taken.

The law upon the duty of the trial Judge is laid down by this Court in its opinion in Improvement Co. *vs.* Munson, 14 Wallace, p. 448, by Justice Clifford.

" Nor are judges any longer required to submit a " question to a jury merely because some evidence " has been introduced by the party having the bur- " den of proof unless the evidence be of such a " character that it would warrant the jury in find- " ing a verdict in favor of that party. Formerly it " was held that if there was what is called a *scin-*

"*tilla* of evidence in support of a case the judge "was bound to leave it to the jury, but recent de- "cisions of high authority have established a more "reasonable rule, that in every case, before the evi- "dence is left to the jury there is a preliminary "question for the Judge, not whether there is lit- "erally no evidence, but whether there is any upon "which a jury can properly proceed to find a ver- "dict for the party producing it, upon whom the "*onus* of proof is imposed."

This Court in a later case following this rule, says:

"Decided cases may be found where it is held "that if there is a *scintilla* of evidence in support "of a case the judge is bound to leave it to the "jury; but the modern decisions have established "a more reasonable rule."

Commissioners *vs.* Clark, 94 U. S., 287.

Bailey *vs.* Cleveland Rolling Mill, 21 Federal Reporter, 159.

"This is the settled practice of the Courts of the "United States. The practice is a wise one; it "gives the certainty of applied science to the re- "sults of judicial investigation; it draws clearly "the line which separates the provinces of the "judge and jury, *and fixes, where it belongs*, the "responsibility which should be assumed by the "Court."

Merchants' Bank *vs.* State Bank, 10 Wallace, 637.

The case at bar was submitted wholly on supposition and conjecture.

"It is clearly error in a Court," says Taney, C. J., in United States *vs.* Breitling, "to charge a

"jury upon a supposed or conjectural state of "facts."

The verdict in this case based on the fact of their being a return notice on envelope is the merest conjecture.

Scintilla of evidence will not justify submissions, nor will juries be permitted to conjecture, to guess. The duty of the trial Judge in this case was clearly to grant the motion for verdict. Refusal was manifest error.

Cases, *supra.*

Dwight *vs.* Germania Life Ins. Co., *supra.*

Ninth Point.—THE FINDING OF THE JURY OF THE NON-MAILING OF THE ASSESSMENT NOTICE OF JUNE, 1884, KNOWN AS NO. 14, IS A FINDING OF FACT WITHOUT EVIDENCE TO SUPPORT IT.

Counsel for plaintiff in error moved to strike out the evidence by defendant in error that she did not receive the notice, and to keep it from the consideration of the jury, and duly excepted to such submission, and to the charge of the Court, as follows, duly excepted: "Was the notice of the assessment of June sent or mailed to the address, as appears on the books, either in June or July? If it was mailed, then there was a forfeiture, and plaintiff cannot recover" (Record, p. 43, fol. 101). Due exception to this charge was taken (Record, p. 43).

"A finding of fact without evidence to support it, if excepted to, presents a question of law for review in the Appellate Court" (Sickles *vs.* Flanagan, 79 N. Y., 224). Plaintiff in error, by ample testimony, shows in detail (Record, 28–36) the course of business of the association, that the notice of this assessment 14 was mailed to address on the books. The books show the assessment notice was sent; it was compared, called back; entry on the book was made showing it was deposited in the mail bag, and mailed. Cross-examination was directed to show witness could not remember every particular notice among thousands, nor this one in particular. The cross-examination does not in the slightest militate against the proof that notice was mailed according to the usual course of business, nor that usual course of business was not followed, nor does it even in fact do more than suggest, without any facts to sustain it, that perchance, through some remote possibility, there may have been an unintentional error without purpose or design. There is not a single fact shown that it was not mailed.

On the testimony of the witnesses and books of plaintiff in error, the proof is clear and positive and uncontradicted.

The defendant in error did not attack the testimony in any way, but gave evidence tending to show non receipt. Such evidence is found at pages 36–39 of the Record, and consists of testimony of W. K. Carruthers, assistant post master, Norwich, that Mrs. Hamlin had a lock-box; that there was no record of return of a letter to the company on

his books; that Hamlin had his business letters come to that box; that all the mail of the partnership of Hamlin & Co. and all letters of the family were put in that box; that he did not know whether this letter was mailed or received, and numerous mails came that he did not see. Mrs. Hamlin testified to having the lock-box; that she, three children and a Miss Fanning had access, and that she had not received it. The three children, a girl of 14, boys of 17 and 18, and Miss Fanning testified they always gave Mrs. Hamlin all letters they took from the lock-box addressed to either their father or mother. This testimony, it is submitted, first, does not contradict the course of business of plaintiff, and second, is insufficient to sustain a verdict of non-mailing according to the course of such business. It is true she says she did not receive it. The evidence shows there was a box to which the members of the firm, their employees, their families, their children, and others had access. A submission to a jury on such testimony as this is tantamount to submitting the issue whether or not it was received.

Under the language of the contract the defendant is entitled to be relieved from any issue of non-receipt, or, as in this case, by the statement of defendant of non-receipt to uphold a verdict of non-sending.

The Court in the charge says: "The plaintiff "(defendant in error) says the notice was never sent "because they say it was never received, and that "in the usual course of business it would have "been received, if it had been mailed. If it is

"shown, or if it has been found, to your satisfac-
"tion, that the notice of the June assessment was
"mailed, the non-reception is no defence.

"But the point in dispute is whether the notice
"was mailed. If the only evidence in the case was
"the testimony of the defendants' witnesses that a
"letter of June was mailed, and that it was not
"received, I should say that the evidence against
"the fact of mailing was insufficient to submit to
"you."

Record, p. 42.

Tenth Point.—THE COURT BELOW THUS CHARGED THE JURY THAT THE FACT OF NON-RECEIPT WAS NOT SUFFICIENT EVIDENCE TO SUBMIT AGAINST THE FACT OF MAILING—BUT SUBMITS THE CASE ON TWO ADDITIONAL FACTS AS SUFFICIENT EVIDENCE TO JUSTIFY SUBMISSION TO THE JURY.

These additional facts the plaintiff in error respectfully submits, were not sufficient justification, but on the contrary, were additional reasons why case should not have been submitted to the jury.

The Court says: "If the only evidence in the case was the testimony of defendant's (plaintiff in error) witnesses that a letter of June was mailed and that it was not received, I should say that the evidence against the fact of mailing was insufficient to submit to you."

The proof of not receiving, the Court finds is

insufficient to sustain a verdict against the proof presented by plaintiff in error.

The legal justification of submission to the jury then must depend on some other evidence—some other facts—what are they? The Court defines them (Record, p. 42, fol. 99): "There are, how-"ever, two additional facts, one, that the letter "contained a return notice, and that the letter "was never returned, which tends to show two "things, one, that it was not by mistake directed "to the wrong town, because if it had been, it "would probably have found its way back, and "therefore tends to diminish the idea that the "letter might have been lost or mislaid in the "mails or have been sent to the wrong place."

Plaintiff in error respectfully submits that such additional fact instead of strengthening the position of defendant in error and being an additional reason why the case should be submitted to the jury is, on the contrary, an additional reason why it *should not have been* submitted to the jury.

The Court says: "It tends to show two things, "one, that it was not by mistake directed "to the wrong town and therefore, tends to "diminish the idea that the letter had been sent "to the wrong place."

Granted.—Then it excludes or tends to diminish the possible accident of wrong address. If sent to the wrong address, the requirement of sending to the address on books would not have been fulfilled. Having a fact that diminishes that idea, how can it be said to be a fact calling for submission, when

the Court admits that that possible error this fact tends to eliminate? If it diminishes the idea that it was sent to the wrong place, it does not diminish the idea that it was sent to the right place, but on the contrary, increases the idea that it was so sent. Because the testimony diminishes the idea that the notice was sent to the wrong place, it certainly is not additional evidence, adding a reason for submission to the jury on the issue, whether it was mailed to the right place.

The fact that the return notice tends to show that it was not mailed to wrong address is, as the Court very properly says, "it would probably have found its way back." The plaintiff in error complains, and suffered error by the Court, because the return notice showed it was not wrongly addressed, that therefore the jury on that fact could find on the issue of correct mailing it was not correctly mailed. The return notice eliminated or tended to eliminate the fact that letter might have been wrongly addressed and nothing more. What weight it had was in favor of plaintiff in error, and so far as it had any weight, added to the reason why case should not have been submitted to jury.

Now, as to the charge of the Court, the fact of return notice "tends to diminish the idea that the "letter might have been lost or mislaid in the "mails," and, therefore, is an additional reason for submission to the jury.

As to that:

First.—We submit it increases the idea of being lost or mislaid in the mails, if anything.

It stands thus.—witnesses say it was mailed; others say it was not received.

A letter mailed with only direction of addressee has only one place where postal authorities know to send it. If return notice the postal authorities have two addresses. They do not send it to either; it is not delivered to addressee; it is not returned to addressor. Would not the rational conclusion be "it was lost or mislaid"? It certainly would. If so then it increases and not diminishes the idea of loss in mail and the Court was in error in saying to jury it diminishes idea of loss, and it was error to base justification of submission on fact of return notice.

The Court says, it tends to diminish the idea "that the letter might have been lost or mislaid in the mail;" on the contrary, if affecting the question at all, it increases the idea that it was lost or mislaid in the mail, instead of diminishing it. Assuming mailing and non-delivery with this return notice, it certainly would be more likely to find its way back with it than without it, and if not delivered or returned increases rather than "diminishes the idea that it was lost or mislaid *in the mail.*"

We respectfully submit that this evidence did not have the additional weight which the Court below gave it in turning the scales and justifying the submission to the jury. What it did show was not having been returned it was not misdirected, and was either lost in the mails or delivered to some of the numerous persons of the copartnership firm, their employees, young children or strangers, who

had access to the box, and that thereafter the plaintiff received it, or it became lost or mislaid after having left the Norwich Post Office.

Second.—The return notice had no weight whatever on the idea of being "lost or mislaid in the mails."

If in fact lost or mislaid, it certainly has no effect as evidence of anything. Neither the address or return notice is seen by anyone. How can it have any effect if no one sees it? If afterwards found it would go to place where it is addressed, and not to place of return notice. Until found it has no effect at all—neither increases or diminishes any idea.

But it may be said this begs the question, because we assume losing in the argument, and the question is was it lost? Not at all. The question is was it marked? It is no more likely to be lost with than without return notice. If not lost it would go as directed, and that would be to correct address, for, as the Court says, the idea of wrong address is eliminated. To restore this suggestion of lost letter was fallacious, and submitted the rights of plaintiff in error to guess of jury what might be, and not on facts. The return notice aided plaintiff in error by eliminating possibility of wrong address only and nothing more, and has no other weight or value whatever.

The Court, in dealing with the other fact, continues:

"Another fact is that the letter, which is said to

"have been mailed about the tenth or fifteenth of "July, is said not to have been received, which "contained a similar return request printed on the "envelope, and plaintiff says it is quite doubtful "that two letters should have been mislaid *in the* "*mails if properly mailed.*"

This additional reason is much weaker if possible than the first given for submission to the jury. It has the same effect, standing by itself. This letter of July in and of itself, as such, has no relation to the case, and the fact that it was not mailed, or mailed and lost, is of no consequence, and such fact neither increases nor diminishes any ideas of mailing or losing, receiving or non-receiving, the assessment notice of June in controversy.

The Court below was right in saying that testimony of plaintiff of non-receipt was "insufficient to submit to you."

Assuming the correctness of this proposition of the learned Judge, we submit that the additional fact of a return notice on the envelope and which was not returned to the company, does not increase in the slightest the justification of submission to the jury. It has but little relation to the issue, and so far as it has any it excludes or tends to exclude the idea of a misdirection of the envelope. In fact, it makes that defense of defendant in error nugatory. That was one of the suggested possibilities. Excluding that possibility does not increase the possibility of not sending at all. The company's books and evidence of its witnesses show it was mailed. Not being returned, it shows, if it shows

anything, that it was mailed correctly. The possible accident of misdiscretion is excluded.

We, therefore, submit the Court erred in giving this additional fact of the return notice, the weight of justifying submission to the jury, and the Court erred in denying the motion of defendant at p. 40 to take such evidence from the jury and to the refusal of the twelfth and thirteenth, fourteenth and fifteenth requests to charge, all of which were duly excepted to (Record, p. 45).

Eleventh Point.—THE COURT BELOW ERRED IN REFUSING THE REQUEST OF COUNSEL FOR PLAINTIFF IN ERROR TO CHARGE THE JURY :

"*That the defendant is an association of per-*
"*sons for the purpose of mutual insurance and*
"*protection, and as such they are bound by the*
"*constitution and by-laws.*"

The evidence of this point was undisputed. The articles of incorporation which established that the defendant was duly incorporated under Chap. 175 of the laws of 1883 of New York, were put in evidence (Record, p. 27). The act of 1883 and act to provide for incorporation of assessment life associations is also in evidence. This showed that defendant was an association duly organized and carrying on business of life insurance on the as-

sessment plan under that law. Sections 5 and 16 are set out in full (Record, pp. 27, 28). The Court refused notwithstanding the evidence was undisputed to charge that the defendant was a mutual association, and that its members were members of a mutual association. Due exception was taken (Record, p. 44). This was manifest error, and excluded the plaintiff in error from the benefits and protection of its by laws and the duties imposed upon its members, and wholly excluded from the consideration of the jury all provisions of the by-laws adopted pursuant to its statute of incorporation in § 16, Chap. 175, Laws 1883, at p. 27 of Record.

Twelfth Point.—THE CONSTITUTION AND BY-LAWS OF PLAINTIFF IN ERROR ARE PART OF ITS CONTRACT AND ARE BINDING UPON ITS MEMBERS.

The defendant is a co-operative assessment company on the assessment plan—(Record, p. 27).

Governed and regulated by by-laws provided for in the laws under which it is organized and transacts business. (See Sec. 16 of Act of Incorporation, Record, p. 27.)

Members of Mutual Association are bound by its by-laws.

" Every one insured by reason of membership in such a mutual company is charged with a knowledge of its constitution and by-laws, bound by their

requirements, and entitled to the rights and privileges conferred by them."

May on Ins., Sec. 552.

Splawn *vs.* Chew, 13 Ins., L. J., 450 (Texas).

Bauer *vs.* Samson Lodge, 15 Ins., L. J., 81 (Indiana).

Miller *vs.* Hillsboro F. A., 16 Ins., L. J., 799 (New Jersey).

Hillenberg *vs.* Independent Order, 94 N. Y., 580.

Bishop *vs.* Grand Lodge, 7 N. Y. Reporter, 121.

Sanger *vs.* Rothchild, 19 N. Y. Reporter, 245.

Simerel *vs.* Ins. Co., 18 Iowa, 322.

Holland *vs.* Taylor, 111 Ind,, 121.

Mitchell *vs.* Ins. Co., 51 Pa., 402.

Fugure *vs.* S. Joseph, 46 Vt., 362.

Fuller *vs.* Ins. Co., 36 Wis., 603.

Gray *vs.* Supreme Lodge (Ind.), 18 Ins., L. J., 427.

"Every person insured in a mutual company thereby becomes a member of the company, and is bound to know its rules and is bound by them."

Bliss on Ins., 2d Ed , 766.

"A member of a society for the mutual insurance of the lives of the members must strictly comply with the provisions of its constitution and by-laws; must punctually pay his dues and assessments within the time prescribed."

Lozesenky *vs.* Supreme Lodge, 19 N. Y. Reporter, 795.

IT IS EXPRESSLY STIPULATED IN THE POLICY CONTRACT THAT THE CONTRACT OF PLAINTIFF IN ERROR IS SUBJECT TO ITS BY-LAWS.

The contract contains this provision:

"This certificate * * * shall be subject to "all the provisions and stipulations contained in "the constitution and by-laws of this association" (Record, p. 47, fol. 109).

Thirteenth Point.—THE BY-LAWS WERE DULY ADOPTED. THEY CONTAIN VARIOUS PROVISIONS RELATING TO THE PAYMENT OF ASSESSMENTS, THE BENEFIT OF WHICH THE PLAINTIFF IN ERROR WAS ENTITLED TO HAVE, AND IT WAS ERROR FOR THE COURT TO EXCLUDE THEM FROM THE JURY.

Plaintiff in error holds annual meetings, is regulated by by-laws. The statute so provides.

Henry H. Hamlin was duly notified of annual meeting in January, 1884, when the by-laws and all their provisions were ratified and confirmed by unanimous voice of the members (Record, p. 36).

The by-laws make due provision requiring payments of assessments at fixed periods—designated, specific days—bi-monthly. (See By-Laws Record, 66-73, Ex. C.)

Assessments at these periods—the first week day of February, April, June, August, October and December are mandatory. See Sec. 5, Constitution (Record, p. 70) and action of Board, July 11, 188;

(Record, p. 33). Confirmed at annual meeting of members January, 1884. Of this meeting H. H. Hamlin had notice pursuant to law (Record, p. 36). He became a member July 26, 1883. All assessments contained notice that assessments were payable at these periods every two months (Record, p. 34). Receipt of all these is admitted (Record, p. 38). Defendant testified she had paid every two months up to April, and then did nothing until September (Record, p. 38).

The by-laws provide failure to pay at these designated periods shall work forfeiture of membership (Sec. 5, Record, p. 70).

Neglect to pay assessments shall render certificate null and void (Sec. 6, Record, p. 70).

Fourteenth Point.—Henry H. Hamlin and the plaintiff availed themselves of the by-laws by making application for reinstatement prior to death, and treated with the association as a delinquent member.

Henry H. Hamlin, in his lifetime and the plaintiff treated with the association in behalf of Henry H. Hamlin, as and for a delinquent member, applied as such, examined as such, and regularly refused by the medical department and the Executive Committee of the Association, under the provision of by-laws.

The by-laws provide (Sec. 6, Recd., p. 70), the Executive Committee may reinstate a delinquent

member within one year upon satisfactory evidence of good health, and upon payment of all delinquent dues and assessments. After both June and August assessments were overdue and unpaid and on September 17 or 18, 1884, application for reinstatement was made by Henry H. Hamlin to the Executive Committee which was refused (Recd , p. 34.

Afterwards, in November, 1884, representative of Hamlin asked for blank in which to make an application for reinstatement in medical examination. Medical re-examination was had, submitted and reinstatement rejected by medical director, December 12, 1884, Recd. p. 34 (Medical re-exam. and rejection, Ex. K, Recd. p. 73).

Fifteenth Point.—HENRY H. HAMLIN NEGLECTED THE DUTY IMPOSED UPON HIM BY THE BY-LAWS.

The by-laws imposed a duty on a member who fails to receive notice, to wit, he must notify home office of said fact (Sec. 5, Rec'd. p. 70). Defendant testifies no notice was given plaintiff in error of such fact. Record p. 39 and V. Prest. Potter also testifies no notice received (Record p. 35).

This is undisputed..

The Court refused second and third requests (Record, p. 44), that there was failure to notify home office of failure to receive June and August assessment. It was the right of plaintiff in error to

have this fact charged whether it would of itself work forfeiture or not, it was an important fact.

Also fourth and fifth, that that fact being undisputed, their verdict must be for defendant.

Due exception to these several refusals was taken by plaintiff in error (Record, p. 44).

Sixteenth Point.—THE COURT BELOW ERRED IN THE VARIOUS REQUESTS TO CHARGE BASED ON THE PROVISIONS AND REQUIREMENTS OF THE BY-LAWS.

Counsel for plaintiff in error moved for a verdict on ground of failure to pay within thirty days from June 2d (first week day), and within thirty days from August 1, 1884, pursuant to these By-Laws, which the Court denied—to which due exception was taken (Record, p. 40).

Also moved to direct a verdict on ground payment within period named in By-Laws forfeited membership and renders policy void—which was denied and exception taken (Record, p. 4).

Also sixth and seventh requests (Record, p. 34), that failure to pay within thirty days from June and August periods worked forfeiture under By-Laws, and verdict must be for defendant.

All this was error and greatly to prejudice of defendant.

The learned trial Judge wholly ignored the By-Laws and refused to charge the jury that the mem-

ber was bound by them or that the certificate and rights of membership were subject to the provisions of the By-Laws, or any of them.

Seventeenth Point.—The objection to the testimony of offer to pay premiums and refusal, on the ground that the pleadings alleged that plaintiff duly performed and fulfilled, and that under such plea, excuse for want of due performance cannot be proved, was well taken (Record, page 39). The Complaint (Record, page 5), paragraph VII, says: "The said Henry H. Hamlin duly fulfilled all the conditions stated in said instrument on his part to be performed."

The attempt was to establish that such payment was sufficient, that is, that the plaintiff was excused from the due performance by reason of the wrongful acts of the plaintiff in error. It is well settled that, under a plea of due performance, a valid excuse for non-performance cannot be proved.

Where facts excusing the performance of a condition precedent are meant to be relied on as a ground of recovery they must be stated in complaint.

Kelly *vs.* Upton, 5 Duer, 342.
Shultz *vs.* Depuy, 3 Abb. Pr., 252.
Garvey *vs.* Towler, 4 Sandf., 665.

Under a general denial a defense which confesses and avoids the cause of action cannot be proved.

McKyring *vs.* Bull, 16 N. Y., 279, 304.

Nor a defence founded upon new matter.

Dillon *vs.* Sixth Av. R. R. Co., 46 Superior Court (N. Y.), 21.

Eighteenth Point.—The judgment should be reversed.

ALFRED TAYLOR,
FREDERICK S. PARKER,
Of Counsel for Plaintiff in Error,
15 Wall Street,
New York.

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 184.

The Mutual Reserve Fund Life Association,

Plaintiff in Error,

vs.

Sarah C. Hamlin,

Defendant in Error.

IN ERROR TO THE CIRCUIT COURT FOR THE DISTRICT OF CONNECTICUT.

BRIEF

On Counsel for Mrs. Hamlin, Defendant in Error.

CHAS. E. PERKINS.

SOLOMON LUCAS.

Hartford, Conn.

Press of Case, Lockwood & Brainard Company.

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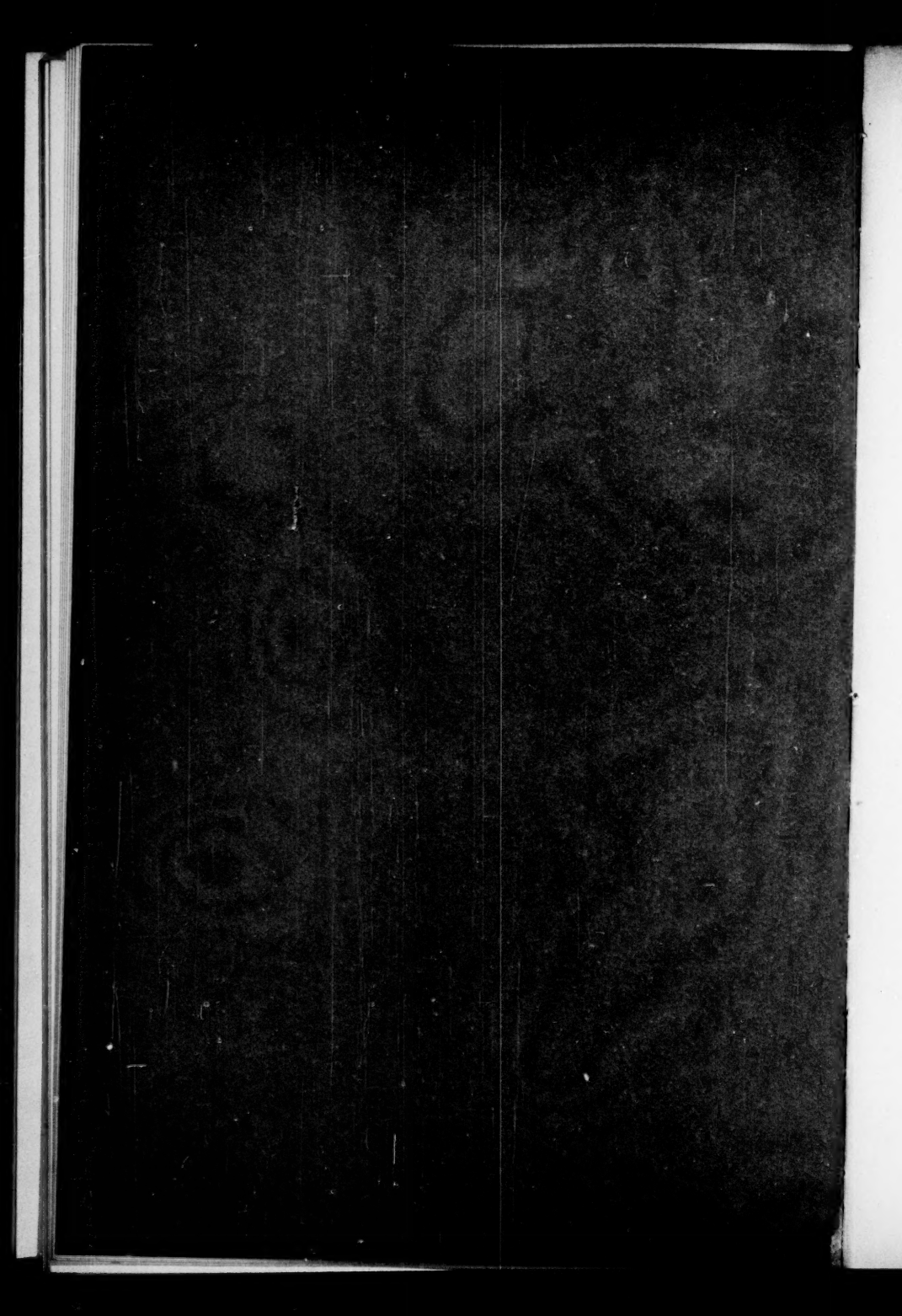

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No. 184.

The Mutual Reserve Fund Life Association, Plaintiff in Error,

vs.

Sarah C. Hamlin, Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

Brief of Counsel for Mrs. Hamlin.

STATEMENT.

The plaintiff below offered evidence to prove that on July 26, 1883, the plaintiff in error issued a policy or certificate of insurance on the life of her husband, Henry H. Hamlin, payable to her, that he died in 1885, and proofs of his death were made in due season, but the company refused to pay on the ground that certain assessments made during the life of said Henry had not been paid, and thereby the policy had become forfeited.

The company then offered evidence to show that certain assessments had been made, and notices of each assessment duly sent by mail to Mr. Hamlin, and that these assessments had not been paid, and that, by the terms of the policy, such non-payment caused a forfeiture of the policy. It also

claimed as matter of law, that it was not obliged to send any notices of the making of such assessments, their amount, or when they were made, but the insured was obliged at his peril to know all these facts. It also claimed that if it was obliged to send any notices at all, it was not its duty to send notices of each assessment, but that a general notice that assessments would be made on certain days was sufficient.

Mrs. Hamlin, on her part, contested these claims, and also offered evidence to prove that no proper notices of assessments had ever been sent to her or her husband at Norwich, Conn., where she resided, and that her husband had become insane before the assessments were made, and was thereafter confined in various insane asylums away from Norwich, and had received no such notices at those places. She also offered evidence to show that she accidentally learned that some assessments had been made, after the time for paying them had elapsed, and at once caused a tender of the amount thereof to be made to the company, but it refused to receive it, on the ground that the policy had been forfeited.

Upon the argument the plaintiff below claimed that the only question in the case about which there was any real controversy was, whether notices of the several assessments were in fact mailed by the company to the proper address. The company, while it claimed to have proved that such notices were mailed, as a fact, also insisted that, upon a proper construction of the policy, and constitution, and by-laws referred to therein, it was not bound to give any such notices of each assessment, or any notices at all, and also asked the court to direct a verdict in its favor, on the ground that there was no legal evidence to sustain the claim of the plaintiff. The court refused to charge as requested, and the company brings this writ of error.

The assignments of error are very general. The first three are that the court should have directed a verdict for the company. The fourth is that the court erred in making the rul-

ings, instructions, and refusals to instruct, which are set out in the bill of exceptions, without specifying any ones in particular. There are thirty-seven exceptions taken by the company and referred to in the bill of exceptions. It would take too much time and space to consider each one separately, and we shall endeavor to group them together. We think that almost all of them will come under the claims of the company above referred to.

POINTS.

First.

The first question is whether by the terms of the policy the company was obliged to send any notices of assessments at all, and if so, whether it was its duty to send a notice of each assessment, or whether a general notice that assessments would be made on certain days thereafter was sufficient, and the insured was obliged at his peril to find out whether any had been made and how much money he was required to pay, or forfeit his policy.

This presents a question of law depending upon the real meaning of the expressions used in the policy, and the constitution and by-laws of the company, which are made a part of it.

It is well settled that the construction of an insurance policy is to be made in favor of the insured, and against the insurers.

May on Ins. (2d Ed.), § 175, says:

"No rule in the interpretation of a policy is more fully established or more imperative and controlling than that which declares that in all cases it must be liberally construed in favor of the insured so as not to defeat, *without a plain necessity*, his claim to the indemnity which, in making the insurance, it was his object to receive."

In Accident Co. *vs.* Crandall, 120 U. S., 533, the court says:

"The word 'bodily' grammatically applies to 'disease' as well as 'infirmities,' and it cannot but be so applied without disregarding the *fundamental* rule of interpretation that policies of insurance are to be construed most strongly against the insurers who frame them."

I. Was the company required to give any notice to the insured about assessments, or must he find out for himself whether any have been made, and how much they are, and pay them within thirty days from the time they are made, or forfeit all he has paid.

The claim of the company is that Article 11, Sec. 5, of the constitution provides that "a failure to pay the assessment within thirty days from the first days of February, May, August, and November, or at such periods as may be named by the directors, shall work a forfeiture of membership in this association with all rights thereunder."

It is not necessary for us here to say more than that taking the policy and constitution together, for the reasons assigned under the next point, such a construction is inadmissible.

II. Assuming that some notice of assessments must be given, was it a fair compliance with the provisions of the policy, to give notice that assessments would be made thereafter on certain days, or had the insured a right to have notice whether assessments had actually been made, and how much they were, before he was bound to pay them?

The company claims that by Article 11, Sections 5 and 6 of the constitution (Record, p. 70), which by reference is made a part of the policy, assessments are to be made on the first days of February, May, August, and November, or at such other periods as the board of directors may determine; that in July, 1883, the directors changed those dates to "the first

week days of February, April, June, August, October, and December (Record, p. 33), and that in 1883 Hamlin was notified of the change (Record, p. 34), and that thereafter the company was not bound to send him any notices of assessments as they were made, but he must find out as best he could whether they were made and how much they were, and pay them within thirty days after they were so made, or forfeit his policy altogether.

It is apparent that no one in his senses would knowingly ever make such a contract as that. It is simply the most outrageous claim ever presented to a court of justice; and is not only contrary to the express provisions of the policy itself, but to the uniform practice of the company.

1. The policy itself (Record, p. 7) provides that the assessments are payable at the principal office of the association in the city of New York "within thirty days *from the date of each notice.*"

On page 8 of Record, folio 21, the policy states, "a notice addressed to each member at his post-office address, as appearing upon the books of the association, according to its usual course of business, shall be deemed a sufficient notice." Notice of what? Evidently of the assessments which are to be made, and a failure to which shall avoid the policy.

No one could read the policy without understanding that the insured was to have such a notice of each assessment as would enable him to pay it without going to New York to find out how much it was.

If it was the intention of the company to cause the policyholders to believe that they should receive notices of *each* assessment, and then to claim that by some clause in the constitution they must pay the assessments whether any notice was sent to them or not, it would have been a gross fraud.

But again on page 7 the policy goes on to provide that "whenever the death fund of the association *is insufficient to meet the existing claims by death*," an assessment shall be made "for such sum as the executive committee may deem sufficient to cover such claims," which is to be apportioned among the insured according to their ages.

The insured is thereby informed that there is a death fund appropriated to the payment of losses, and it is only when this is insufficient that any assessment is to be made, and then only for some indefinite sum, and each member is to be assessed according to his age, so that the policy-holder could never know whether any assessment would be made, or, if so, how much his share would be, unless a notice of such assessment were sent to him.

The whole instrument, policy, constitution and by-laws, are to be taken as one instrument and construed together, and if there is any doubt as to the construction of either, the terms of the policy are to prevail, and especially if there is any apparent inconsistency between them, it is to be determined in favor of the insured.

2. The result of such a construction shows the utter absurdity of the claim.

The insured is to pay each assessment within thirty days from the date of *each notice*. That is the time they are payable. Of course they cannot be paid until after they are made.

Now, if the notice there referred to is the notice given Dec. 11, 1883, that the directors had decided that assessments should be made six times a year instead of four, and that was the only notice of assessments that the company was bound to give, then Hamlin was bound to pay all assessments thereafter made within thirty days from the date of *that notice*, that is, that he must pay *all* the assessments made on him during his *whole life* within thirty days from December 11, 1883!

The policy (Record, p. 7, folio 22,) says that if any of the payments shall not be paid *when due*, the policy shall be forfeited. By the former provision assessments are payable thirty days *after notice*, which makes them due thirty days after some notice, and if the notice there referred to is the notice given Dec. 11, 1883, then they all became due thirty days after that date!

It is apparent that such a construction is absurd and would make nonsense of the provisions both of the policy and constitution on this subject.

3. But a decisive answer to this claim is to be found in the construction given to this clause by the company itself. In their answer (p. 15, Record) par. XV, they allege as part of their defense that an assessment of dollars was made on Hamlin, and that a "due notice thereof according to the usual course of business of the company," was sent to him on the same day, and that he failed to pay for more than thirty days thereafter, and by reason thereof the policy is void; and in the next three paragraphs they state that notices of three other assessments were given to him. All through the evidence given on the part of the company it appears that it was their custom to send a notice of each assessment as soon as made, and the method of sending is detailed quite fully.

This conduct of the company is a practical construction of the meaning of this clause of the policy, if any were needed, as it is well-settled law that the acts of parties to a contract are the best evidence of its meaning, and the construction they placed on it at the time it was made.

By sending such notices of each assessment made since the issuing of the policy, the company is estopped from claiming a different construction. They substantially thereby said to the insured that the policy required special notice of each assessment to be sent, and it would be a fraud on him thereafter to claim a different construction.

SECOND.

The next question is, whether the judge should have instructed the jury upon the whole evidence to return a verdict for the defendant, on the ground that there was no evidence to justify a verdict for the plaintiff.

The case stood in this way: The plaintiff made out a *prima facie* case by showing the policy, the death, and the proofs of death.

The defendant then undertook to show that on June 2, 1884, an assessment of sixteen dollars was made on Hamlin, and that a notice of that assessment was sent by mail on that day, directed "Mrs. Henry Hamlin, Norwich, Connecticut," which was the proper address of the insured as it appeared on the books of the company. This was a pure question of fact for the jury—Was that notice so directed and mailed?—and was really the only question of fact in the whole case.

Upon this question the defendant took the burden of proof, and might show it in one of two ways,—either by some witness swearing that he made such a notice, and deposited it in the post-office, or by showing generally that it was the custom to send such notices to each policy-holder on that day.

It seems that the number of this policy, issued in 1883, was 13,544, and Mr. Potter testifies (p. 36, Record, folio 88) that August 1, 1884, some twelve or thirteen thousand notices were sent to members, of the assessment then made. It was reasonable to infer, therefore, that on June 2, 1884, there were ten or twelve thousand notices of the asesssment of that day sent to members.

It was perfectly obvious, therefore, that no one person could have sworn, from his or her personal knowledge, and from his or her own distinct recollection, that a notice to Mrs. Hamlin was so addressed and mailed on that day.

It is true that on the direct examination two witnessess pretended to swear positively that they knew this of their own knowledge, but on cross-examination it speedily appeared that they really knew nothing about that particular notice, but only supposed that it had been mailed because it was usual to mail notices to every one, and that there was a check made by some one against the name of Mrs. Hamlin on what was called the assessment book.

The company introduced two witnesses on this point. The first one, Mrs. Jones, whose testimony begins on p. 28 of Record, is represented as saying in her direct examination, folio 73, that the notice of this assessment "was mailed," that it "was deposited" in a mail bag, and on p. 29, "I know that this assessment notice to Henry H. Hamlin went into the bag."

In answer, however, to the cross-examination by Mr. Lucas, it clearly appears that all she knew about it was that it appeared on the assessment book that it was so mailed, although she struggled hard to give a different impression to the jury. A reference to some of the testimony from p. 29–30 of Record, will show this:

"Q. When assessment No 14 was made out, you knew nothing about it except as it appears in this book?

"A. I know I had charge of it, and saw that every assessment notice that was liable for No. 14 was made out.

"Q. Have you any knowledge except as it appears upon the book?

"A. As it appears onthe book; I have no other knowledge than that." [Here she is evidently stating the exact fact, but seeing the effect of it, goes on to try to qualify it.] "I saw notice of assessment 14 to Henry Hamlin put into the bag; I saw it *with all the others.* My attention was called to this particular notice *with all the others.*" [Then she goes on, in the same vein.] "I saw that that, and every notice, was put into the mail bag. I remember a great many notices were put in, and I know Hamlin's notice was put in with the others." [See how ingeniously she

slips in that she "knows this."] "I always attended to it myself." [Finally she is fairly driven to the wall, only she even then makes one final effort] "I have no particular recollection of this particular notice except that it went into the bag with the others, and *so far as my attention was called at the time of making it out and putting it into the bag.*"

On p. 30 she is asked:

"Q. Did you see this particular notice put in the bag?

"A. *I know it was.*

"Q. Was your attention called particularly to this at the time?

"A. No!

"Q. When you say this notice was deposited in the mail bag, your attention was not particularly called to this notice?

"A. *Not particularly to this special one*, to all of them."

So she is obliged finally to confess that she paid no attention at the time to the notice to Mrs. Hamlin, any more than to ten thousand others made out that day, and only believes it was put into the mail bag because she believed notices were sent to every one whose address was on the book.

If she had frankly come forward at the beginning and said, what every one knew at once must be the fact, that among so many thousand notices she could not possibly remember as to any particular one, but that she believed, and had no doubt that the notice was sent, she would have made a much more favorable effect upon the jury. As it was, the natural effect of her testimony would be to lead the jury to think that she was for some reason endeavoring to make a false impression on them, and to lead them to doubt whether reliance could be placed on what she said.

The only other witness on this point was Mr. George F. Potter, who gave a deposition on p. 31 of Record, and also testified orally on p. 33, *et seq.*

On the re-direct examination on p. 32, folio 81, he was asked: "Q. Was your attention called as to whether this

particular notice was sent or not? A. No, sir." And on the next page he was asked: "Q. So that you are unable to state whether any clerical error was made or not." A. From my own personal knowledge, no.

These were all the witnesses offered by the company to prove that any notice was sent to Hamlin of this assessment of June 2d, which was the only one in controversy, and it left that question one of inference only, not of direct testimony. It was obvious that among such a vast mass of notices, all made up and sent in one day, it was very possible, not to say natural, that there might be an omission or error in directing or mailing.

It became merely a question of probabilities for the jury, to be decided in view of all the circumstances connected with the case.

To meet this claim of the company, the plaintiff below offered evidence of the assistant postmaster at Norwich to show that Mrs. Hamlin had a lock box in the post office there, in which all letters for her were placed; that all letters which had a request to return printed upon them (as it was claimed the notice claimed to have been mailed had), were always returned, and a record of them kept, and that no such letter was returned to the company in June, July, or August, 1884.

Mrs. Hamlin then testified that she never received any such letter, and that only herself, her three children, and a Miss Fanning had access to the lock box in the post-office; and the testimony of the three children and of Miss Fanning was offered to the same effect.

All this evidence was objected to, principally on the ground that it was irrelevant, as it did not tend to prove that the letter was not mailed; but it was admitted by the court.

Substantially the same question was presented by the motion to direct a verdict for the company, on the ground that the jury should disregard this evidence.

The court left it to the jury to decide, upon all the evidence, whether the company had established by a fair preponderance of proof the question upon which it took the burden of proof, that this letter was mailed; telling them that if mailed it was of no consequence that it was not received; that fact was only important as bearing upon the question whether it had been mailed or not.

It hardly needs more than the statement of the case to show that this course was the proper one.

The controversy in the case was between two courses of business. The witnesses for the company testified that it was according to the usual course of business of the company to send a notice to each member, and detailed that course to show how careful they were, and that it was not probable that there was any mistake or clerical error as to the notice in question.

On the other hand, the plaintiff below claimed that according to the usual course of business in the post-office, if such a letter was mailed it would have reached Norwich within a reasonable time, and would have been either put in Mrs. Hamlin's box or have been returned to the company, in accordance with the return request printed on it, and that the jury were to judge which course of business they thought most reliable; whether they thought it most likely that in the hurry of sending off ten thousand notices in a day or two, one or more errors might have been made, or that in some incomprehensible manner the letter was lost after mailing, and never reached either Mrs. Hamlin or was returned to the company; and it was probably urged upon them, that if the probabilities were equally balanced the company, taking the burden of proof, must fail.

The jury decided that the probabilities were in favor of the course of business of the post-office, and if the evidence of the plaintiff below was admissible and relevant at all, this court will not interfere with their verdict.

That it was both relevant and admissible there can be no doubt whatever. Nothing is better settled than that there is a presumption of fact that letters mailed reach their address.

Greenleaf on Ev., Vol. 1, § 40, says:

"If a letter is sent by post it is presumed from the known course in that department of the public service that it reached its destination at the regular time, and was received by the person to whom it was addressed if living at that place and usually receiving letters there."

In Huntley *vs.* Whittier, 105 Mass., 392, speaking of this presumption the court say:

"The presumption so arising is not a conclusive presumption of law, but a mere inference of fact, founded on the probability that the officers of the government will do their duty, and the usual course of business, and, when it is opposed by evidence that the letter was never received, must be weighed with all the other circumstances of the case by the jury, in determining the question whether the letter was actually received or not."

In Briggs *vs.* Hervey, 135 Mass., 186, the court say, on p. 188:

"The evidence that letters were so deposited was competent, and should have been submitted to the jury in connection with the other evidence in the case. They alone have the right to decide whether the inference that the letters were received, founded upon the probability that the officers of the government will do their duty, and that letters will be duly delivered, is overcome by the other evidence."

In Rosenthal *vs.* Walker, 111 U. S., on p. 193, the court say:

"The rule is well settled, that if a letter properly directed is proved to have been either put in the post-office, or delivered to the postman, it is presumed from the known course of business in the post office department that it reached its destination at the regular time, and was received by the person to whom it was addressed"

If the course of business in the post-office is presumptive evidence that a letter which is mailed was received, it must necessarily be also presumptive evidence that if no letter was received, none was mailed. The presumption is more clearly relevant when the only evidence that the letter is mailed is a presumption arising from the usual course of business of a corporation.

It would be gross injustice if policy-holders in assessment insurance companies, where such clauses are placed in the policies, were conclusively bound by mere evidence that it was the usual course of business of the company to send notices to them. The only possible evidence they could introduce to rebut such a claim is just such evidence as was offered and admitted here.

The policy itself (Record, p. 8, folio 21), provides that proof of mailing the same according to the usual course of business of the association shall constitute and be deemed and held sufficient proof of compliance herewith on the part of said association.

By the policy itself, therefore, the fact that a notice was mailed according to the usual course of business of the company, becomes the issue for the jury to pass upon.

It was claimed in the court below, that this clause meant that proof that it was the usual course of business of the company to send notices, should be sufficient proof that a notice was sent; but, under the rule of construction heretofore referred to, no such construction could be placed on the words,

even if it could be supposed that a company would offer, or an insured would accept, such a provision.

It appears in the evidence that the usual course of business of the company was to mail a notice of each assessment to each policy-holder at his post-office address, as registered on the books of the company; and whether a notice in this case was so mailed or not was the only question of fact in the case. The judge could not take away this question of fact from the jury and decide it himself, so long as there was any evidence offered by the plaintiff which was relevant, so that really the only question is whether evidence that no such notice was received by the plaintiff or returned by the post-office to the company, was admissible at all, or was totally irrelevant.

That such evidence was relevant and admissible to show that a letter was received is clear upon the foregoing authorities, and it must be equally so to show that it was not sent. If the law infers that whatever goes into the post-office reaches the person to whom it is addressed, because it is to be presumed that the post-office always does its duty, then, clearly, if no letter reaches a person, it is to be inferred that no letter was mailed, because the inference is, that all letters mailed and properly addressed reach the person to whom they are directed.

That this precise question has not been passed upon in any decided case is not singular. In all cases heretofore the question to be decided has been, whether a letter was received, and the fact that it was mailed was held to be evidence that it was received. It is only in the case of such an extraordinary provision as this, making it the duty of the insured to pay an assessment or forfeit all he has already paid, whether he ever received notice of it or not, that exactly such a question as this could arise.

It was suggested in the court below, that this claim about "proof of mailing same according to the usual course of busi-

ness of the company," meant that proof that it was the usual course of business of the company to mail notices should be a sufficient compliance with the terms of this provision.

Under the rules of construction already referred to, such an unreasonable construction as this should not be given to this claim.

Proof of mailing a notice "according to the usual course of business of the company," means that the *mailing* should be done according to the usual course, that is, in the way the company usually mailed notices.

There are different ways of mailing,— by depositing in letter boxes in the street, or in the general receptacles in the principal or branch post-offices, by sending large packages as newspapers or other articles are sent, or by having special mail bags furnished and delivered to carriers, or in other ways.

This claim was obviously inserted to meet any objection that the peculiar method of mailing was not the proper one.

THIRD.

There are sundry other claims presented by the bill of exceptions, of minor importance, and we do not know whether they will be insisted on here or not, but we will consider them briefly.

I. The third, fourth, and fifth requests ask the court to charge (p. 44 of Record) that, because there was no evidence that Hamlin notified the home office of a failure to receive sundry notices of assessments the jury must find for the defendant, which the court refused to do.

We were at first at a loss to find the object of this request in the Record, as no grounds for it are stated, and there is no

provision of the policy which requires such a notice. On a close examination of the constitution we found a provision (Record, p. 70, folio 154) that *a failure to receive a notice of assessment* should work a forfeiture, which was obviously a misprint, and on examining the answer (p. 15 Record, folio 38) we found set out there an extract of this paragraph of the constitution containing this clause:

"A member failing to receive a notice of assessment on or before the *first days* of February, May, August, and November, for his share of the losses occurring during the time specified, *it shall be his duty* to notify the home office in writing of this fact."

The Record has since been amended to this effect. Assuming this to be the omitted part of the constitution on page 70, we can see no relevancy in it, unless it is to be claimed, that if he does not so notify the company his policy is forfeited. To this we say:

1. The constitution says nothing of this kind. It merely says it shall be the *duty* of the member to notify the company, but does not say what result will follow if he does not do so.

Suppose he does not so notify the company, what then? The constitution is silent, and it would hardly be the duty of any court to annex a forfeiture to the non-observance of this provision when even the company itself has not attempted to do it.

Forfeitures of policies are not to be assumed or made out by construction; on the contrary, they are to be avoided, if possible. It is said by high authority, "Forfeitures are abhorred in equity, and never favored in law."

2. If we are to be nice and technical in the construction of this clause, it will be seen to be very carelessly drawn, and, as it stands, to have no effect. It says a member failing to receive a notice of an assessment *on or before the first days*

of February, May, August, and November. That is, if no notice of an assessment *is received* on or before *those days*, he shall notify the company.

Possibly the draftsman intended to say that if he did not receive any notice of assessments *made* on those days, he should notify the company, but it does not say so. Besides, if it is understood to relate to assessments made on those days, how can he fail to receive a notice *before* those days? Does it mean that if he fails to receive a notice before an assessment is made he is to notify them?

3. Even if this clause has any definite effect, it in terms only refers to assessments made in February, May, August, and November; but it appears that the one in question was made in June, and therefore does not come under the months named.

4. Moreover, the assessment in question was not made on the *first* day of any month, for it was made on the second day of June. The request to charge on this point was that Hamlin did not prove that he notified the company of a failure to receive a notice of assessment on or before the *first* day of June. As there was no assessment made on that day, it was immaterial, and the court was not required to charge about it.

The third and fifth requests are also immaterial for the additional reason, that Mr. Taylor, the vice-president of the company, testified (p. 35, Record, folio 87) that the August assessment notice was not mailed to Hamlin, because he was considered to be no longer a member of the company.

II. The first request was that the court should charge that all the members of the association were bound by its constitution and by-laws.

This was immaterial, for the only question in the case was whether Mr. Hamlin was so bound; the court could not be

required to assume or to charge about the relation of other persons not parties to this controversy, and whose policies were not before the court. Even if the request had been that Mr. Hamlin was so bound, it would have been immaterial and unnecessary for the court to make such a charge on general principles, because the policy, by its terms, made the constitution and by laws a part of it, and there was no claim that he was not affected by them.

Besides every part of the constitution and by-laws, which related to the issue in this case, viz.: those relating to assessments, notice of them, and failure to pay, were also contained in the policy itself.

III. On p. 38 of Record, the defendant objected to evidence offered to show that in June, 1884, Mr. Hamlin was, and had been for a long time, insane, and confined in an insane hospital at Providence, R. I.

This evidence was only offered, in connection with the other evidence, showing who took letters from Mrs. Hamlin's post-office box, to show that Mr. Hamlin could not have taken them, as he was confined in the asylum for insanity. It was clearly admissible for that purpose if the other evidence was admissible, and was strictly limited to that purpose by the ruling of the judge.

IV. The ninth request (p. 45, Record), and an objection to Mr. Conover's evidence on p. 39 of Record, relate to a question of an offer to pay the June assessment on September 6, 1884.

All that is necessary to say about this is, that by the terms of the policy it was not necessary to pay the assessments until thirty days after notice was sent by the company, which the jury found had not been done; but in order to save all possible question the plaintiff showed that immediately on obtaining from other sources knowledge of an assessment, she caused the amount to be tendered to the company, which they refused to accept.

The allegation of the complaint is that the plaintiff did all that she was required to do, and certainly she could not be required to do more than make a tender of the assessment as soon as she learned of it. She could hardly be expected to make them receive it if they refused.

V. On p. 26 of Record, the defendant at the close of the plaintiff's testimony moved to dismiss the complaint, which is equivalent to asking the court to direct a verdict for the defendant, on the ground, among others, that it was admitted by the pleadings, that Mrs. Hamlin applied to the defendant to re-instate Mr. Hamlin as a member of the company.

1. It is well settled that if the defendant asks for a verdict in his favor at the close of the plaintiff's case, and it is refused, and he then introduces evidence on his side of the case, he thereby waives this motion, and the refusal to grant it cannot be assigned for error.

Robertson *vs.* Perkins, 129 U. S., 233.
Insurance Co. *vs.* Crandall, 120 U. S., 527.

If this question was now open, the ruling of the court was correct. It could not be a defense that Mrs. Hamlin asked the company to re-instate her husband as a member if he had ceased to be one. It was not an admission on her part that there had been a forfeiture. The most that can be said of it was that it might be referred to as evidence which, unexplained, tended to show an admission. It was merely an effort on her part to settle the disputed questions between her and the company, and prevent further disagreement and litigation.

Fourth.

We have thus gone over, at much greater length than seemed to us to be required by the nature of the exceptions, substantially every point made in the court below.

It appears to us, that so soon as the court examines the case sufficiently to appreciate the exact questions made by this record of seventy-six pages, it will be apparent that there can be no doubt as to any of them; and so clearly so that it will appear that the writ of error must have been taken merely for delay, and especially in a case of this character.

It is no doubt the legal right of an insurance company to contest in a court of law any claim made upon them, and if defeated in the lower court to obtain the opinion of this court, but they should do so under the restriction that if the grounds of error are so clearly flimsy and unsubstantial as to make it certain that there was no probability of a reversal, they should be subject to some greater penalty than the mere payment of interest at the usual and legal rate.

The power to obtain a delay of four years may be easily used to force poor widows and orphans, who are usually the plaintiffs in such cases, to submit to almost any requirements, however unjust, to obtain the means of supporting life.

If there are questions in this case about which the court entertains a reasonable doubt, these considerations would not apply, but if out of all these thirty-seven or more exceptions, there is not one which has even a plausible ground for its support, we ask the court to say so, and impose the penalty of ten per cent. damages, instead of six per cent.

At any rate, we submit that there is no ground for a new trial, and that the judgment below should be affirmed.

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